v. Blackmore (C. C. A. 6th) 75 F. 773; Frelinghuysen *v.* Hugent C. C.) 36 F. at p. 239.)

"The receipt by the collecting bank of a check drawn against the account of one of its depositors does not bring anything into the bank, and can not be said to agument in any way assets passing into the hands of the receiver. It is a mere shifting of credits. (Larabee Mills *v.* First National Bank (C. C. A. 8th) 13 F. (2) 330; American Can Co. *v.* Williams (C. C. A. 2) 178 F. 420; North Carolina Corp. Com. *v.* Merchants and Farmers' Bank, 137 N. C. 697, 50 S. E. 308."

The same result follows where the collecting bank receives in payment of the draft, a check upon another bank and subsequently transmits said check to the drawee bank or to a correspondent for collection from the drawee bank, and after the check is collected the proceeds thereof are applied either by the drawee bank or by the correspondent of the collecting bank, as the case may be, upon the indebtedness of the insolvent bank. In such case the proceeds of the collection item have been absorbed in payment or settlement of the specific debt of the insolvent bank, and hence there is no augmentation or building up of the assets of the insolvent bank, and there results only the elimination or reduction of the specific debt, with a corresponding liability growing up in favor of the transferor or forwarder of the item. This absorption of the proceeds of the collection item may occur also in the cancellation of items in the process of a clearing-house transaction where the banks present the items against each other, and the items so presented are used to retire or eliminate a corresponding amount of items against the bank. Here again the transaction results merely in bookkeeping entries, with no augmentation or increase of assets unless it so happens that the balance in the clearings is in favor of the insolvent bank which had received the item for collection, and in such event such balance in favor of the insolvent bank may be paid by cash or by draft or other paper which ultimately results in cash, thereby increasing or augmenting the assets of the insolvent bank to the extent of the proceeds actually collected by it from the clearings. If such proceeds are afterwards traceable to the receiver, a preferred claim would, of course, result. For a consideration of the situation resulting where such clearing house and similar transactions have occurred, see Farmers' National Bank *v.* Pribble (15 Fed. (2) 175); First National Bank *v.* Williams (15 Fed. (2) 585); Smith Reduction Corporation *v.* Williams (15 Fed. (2) 874); Larabee Mills *v.* First National Bank (13 Fed. (2) 330).

The foregoing covers the classes of cases most frequently occurring, and the principles therein discussed furnish the basis for the disposition of related or analogous cases. Where the assets of the bank have been built up or augmented by the proceeds of the collection item and where such proceeds are traceable to the receiver, such proceeds are considered to be the property of the forwarder or transferor of the collection items, but, on the other hand, where the collection of the item has not resulted in building up or augmenting the assets of the bank, or, even if there has been such augmentation, if the collection proceeds have been disbursed or expended by the collecting bank prior to the appointment of the receiver, it can not be said that the receiver takes over any property or funds belonging to the preferred claimant, and hence the transferor or forwarder of the collection item should not receive a preferred claim at the expense of the general creditors or depositors, but he is entitled to participate, as a general creditor, with the other general creditors, in the assets taken over by the receiver for the benefit of the general creditors.

As previously herein suggested, it seems to have been clearly the intent of Congress, as indicated by the language used in the case of Cook County National Bank *v.* United States, 107 U. S. 445, that all creditors of a national bank should be placed upon the same basis without preferential payment. However, as the years have passed, the courts have, from time to time, rendered decisions drawing a distinction between the depositors of a national bank and those who are not depositors but who use its services in caring for temporary transactions, mostly without any compensation to the bank, and who, in the opinion of the courts, do not thereby become creditors by reason of such transactions. So complicated has the subject of preferred claims become, and so varied in application are the decisions rendered favoring the casual patron as against the regular depositor of the bank, that a serious handicap has resulted in the liquidation of insolvent national banks and a just distribution of the proceeds of the estates liquidated. The allowance of preferred claims, as a result of court decisions, is to-day the cause of a most substantial depletion in many failed banks of the funds of the institution which would otherwise be distributed pro rata to each and every claimant against the insolvent bank. In this connection it may be noted that

out of the funds available for distribution in the amount of $25,215,143 to pay the creditors of 103 receiverships of insolvent national banks liquidated during the fiscal year ending October 31, 1929, the following payments were made to said creditors:

To preferred and secured creditors	$12, 561, 313
To unsecured depositors	12, 653, 830
Total of distributable assets	25, 215, 143

The claims filed by the general creditors aggregated $25,714,590, and therefore it will be noted that while full payment was given to the preferred and secured creditors, only approximately 50 per cent was given to the general creditors. Had distribution been made to all creditors upon an equal basis, each creditor would have received approximately 65½ per cent on his claim. (See text of the Annual Report of the Comptroller of the Currency, December 2, 1929, pp. 24 and 25.)

From year to year, as the decisions of the courts become more favorable to those claiming preference against insolvent national banks, the funds available to pay the general creditors grow less and less. These national banks are chartered for the purpose of serving their communities in the banking business and when disaster comes, all claims should be upon the same basis, and all funds recovered from the liquidation of the assets of these institutions should be distributed prorata upon such claims. The bank is built up by its depositors, and it is only by their continued patronage that the bank is able to carry on its functions and be in a position to render its services as a collection agent to persons who are not depositors of the bank, and it does not seem that those who make use of the bank as a matter of convenience as a collection agent should be preferred over those who in good faith put their deposits in the bank and make it possible for it to function.

Mr. GOODWIN. I have a case in mind that has led me at least to look with favor upon this bill.

Some two years ago one of my constitutents living at Anoka, Minn., owned a piece of property down in Orlando, Fla., and through his bank he sent the deed to that property, together with a letter of instructions to collect a considerable amount of money and, upon the collection of the money, to turn over the deed. The deed went to a bank in Orlando Beach, Fla. The purchaser did not have enough money, so he borrowed the money and deposited it to his account in the bank and gave the bank his check on the same bank. The bank delayed remitting for almost three weeks, and then it failed.

My constitutent back there in Anoka had nothing to do with the selection of this bank, except that his bank did the selecting.

Do you not think that that kind of a situation should entitle the owner of that property to the position of preferred creditor of that bank?

Mr. BARSE. Well, there are two factors which are involved there. One, of course, is the fact that the forwarder of that item selected his local bank, and I assume that under many of the decisions that local bank would be charged with negligence in not seeing that a prompt collection was made, and so in that case he would probably, or at least possibly, have his action against his original depositary bank for being negligent in not seeing that there was a prompt remittance.

The second factor is one that does directly relate to this bill, and that is that in the case you mentioned there was no augmentation as such——

Mr. GOODWIN. There was this augmentation, that the purchaser borrowed the money from another individual to make up the amount that he was deficient. To that extent there was an augmentation, and a considerable one.

Mr. BARSE. There was an augmentation in the sense that he went to his bank, which was also the collecting agent bank and his depository bank, and made a deposit on his account just the same as you and I would. He did not pay that money over in payment of this draft, but he passed title to that money to the bank as part of his deposit.

Mr. GOODWIN. Correct.

Mr. BARSE. And, having done that, that was one transaction completed. Thereafter he gave a check upon his deposit in payment of this draft, and in that case there would be no augmentation so far as the forwarder of that item is concerned, and so far as collection by that bank is concerned, because when the bank received that check from the drawee of the draft in payment of that draft, it simply resulted in a shift upon the books of debits and credits.

Mr. GOODWIN. I understand that is the law under the decisions of the courts, but I maintain that under a condition of that kind——

Mr. BARSE. I have not finished.

Mr. GOODWIN. Pardon me.

Mr. BARSE. Even in that case, however, the tendency mentioned by Mr. Awalt a few minutes ago has given further indication of the liberality of the courts in supporting trust funds or augmentations, and in that particular connection I refer you to a case with which I am frank to say I do not personally agree, but the courts did agree. It is the case of Ellerbe *v.* Studebaker Corporation of America, 21 Federal, Second, 993, decided in 1927, where under very similar circumstances the court held that the relation between the deposit in the deposit account and the giving of the check on that account for the purpose of meeting that draft—that the two transactions were so close together that they treated them as an augmentation.

So that your friend in question could have, under the doctrine in this case that I have just mentioned, obtained, if the court had followed it, and this was a circuit court of appeal's decision, a decision that that was an augmentation and was a trust fund and he was entitled to a preference. That just indicates how far the courts are going in that direction.

Now, if the committee desires I will be very glad to go ahead and briefly outline what we understand to be the present scope of the Federal decisions on this question of the collection of items as such, and the situation from the standpoint of the act of Congress governing liquidation of national banks.

The present statutory law, by which I mean the national bank law, does not contain any provision at all as to what are termed preference claims. On the contrary, section 5236 of the Revised Statutes expressly provides that in liquidating a national bank, a failed national bank, through the comptroller and the receiver, there shall be a ratable distribution, so that the intention of Congress is clear that there shall be a ratable distribution and no provision is made for preference.

In that connection, a case arose, known as the Cook County National Bank case (107 U. S. 445) wherein the United States, as a creditor of a national bank, sought to obtain a preference under section 3466 of the Revised Statutes, which provides, in substance, that where the United States is a creditor of an insolvent individual or firm, the United States shall have a preference, and in this case the United States, under Revised Statutes, section 3466, sought to

establish a preference claim against the assets of this failed national bank.

The Supreme Court of the United States in that case, adverting to this provision of section 5236 of the Revised Statutes that there shall be a ratable distribution of assets of national banks, denied to the United States a preference claim, on the theory that Congress had not intended any preference claims at all, but intended purely a ratable distribution.

I mention that merely to indicate that it was the intention of Congress that in liquidating national banks all creditors and all claimants should be upon the same basis.

The courts, however, have gone beyond that and have allowed what are termed preference claims in cases where it can be determined that there is a trust fund taken over by the receiver of the insolvent bank. The trust fund will arise in any case where a bank receives funds or property for some special purpose as distinguished from receiving it by way of deposit as such, such as collection items. I guess the commonest illustration might be the kind you have just mentioned, where it was sent for a special purpose, in escrow, so to speak, as distinguished from deposit. And where there is such a trust relationship, or of principal and agent, if you wish—for it is all the same in legal effect—the courts have held that there is the first element of a preferred claim against an insolvent bank.

Assuming that to exist, and assuming further that there was added to the assets of the bank by reason of this trust transaction any additional assets, such as cash, or a check given on another bank which resulted in cash or credit amounting to cash, and so on, you have your second factor of augmentation which we have been discussing so much.

Then, going to the third step, if the funds are augmented, then so far as they can be traced directly or indirectly into the funds of the bank taken over by the receiver at suspension, a preferred claim exists.

So, on that theory, just pausing there for a moment, when the comptroller distributes the assets taken over by the receiver, over here on one side are certain funds or properties which can be identified as the properties of a preferred claimant, to us that term; they are allocated in that way, and the decisions are uniform that in such case of allocation, or identification, a preferred claim will exist as against the general creditors, and the theory is that it does not damage the general creditors because all that the general creditors are entitled to are the general assets of the bank. So that on the other side are the general assets of the failed bank, and the comptroller distributes those general assets among the preferred creditors in the form of dividends.

Now, a few illustrations along that line I think will be helpful in seeing just how far the courts have gone. There is no difficulty in a case, for instance, where a collection item is received by a collecting bank and the collection is made, we will say, in cash. The bank takes that into its vaults as such. It fails. A preferred claim is filed by reason of that trust transaction. Let us assume that only two or three days prior to suspension, the bank had been paying out some money, as of course, it would, in deposits, on bills payable, and so forth. Under the older decisions, they denied a preference claim because they could not trace the identical fund. As Mr. Shinn mentioned,

the older decisions held that where there was commingling there could not be a trust and there could not be a recovery, but that position has been departed from to some extent in the endeavor of the courts to get at the real situation, and they now say, "Yes, it is true that this bank, after the receipt of these trust funds, and before suspension, paid out some money, but we are going to presume that the bank paid out its own funds and not its trust funds and therefore when that bank closed there was on hand cash equal to the trust fund on hand and therefore we will allow the trust fund in this case." In that case there would be a preferred claim.

On the other hand, if the bank gets cash which it is clearly demonstrated was wrongfully disbursed by the bank, and it thereafter failed, then it seems clear that when the receiver took over the assets he did not take over any assets belonging to the forwarder of the collection item, because those assets have been dissipated and in that case is can not be said there is anything traceable into the hands of the receiver as such, and consequently the comptroller or the receiver could not take from the general funds belonging to the general creditors something to pay this forwarder of the collection item, because he has nothing belonging to that forwarder of that collection item.

There is a further variation of that on the other side. Take the case of Bartholf *v.* Millett, 22 Federal, second, 538. That case did not involve the forwarding of a collection item as such, but the same principle applies. In that case the insolvent bank, of course prior to insolvency, had held certain notes of a debtor, and it had afterwards rediscounted them with the correspondent bank. The debtor came in one day after that rediscounting and wanted to pay his notes. The original bank which held them accepted from him checks in payment of those notes, which was irregular, for it had no right to do it because it had already sold the notes to another bank. It thereby established immediately a trust fund, of course. That recipient bank then transferred the checks to this correspondent bank, and the correspondent bank applied those checks in payment of an overdraft which this recipient bank owed, and in paying that overdraft the correspondent bank subsequently released to the receiver of the insolvent bank certain collaterals.

The court went so far in that case as to say that inasmuch as this debtor's checks had gone to redeem this collateral represented by this overdraft, that there could be a tracing of funds into that collateral, and the correspondent had a preferred claim to the extent of the liquidation of that collateral.

Mr. WINGO. The augmentation of the assets came in there.

Mr. BARSE. That is it.

Mr. WINGO. He paid the old draft and redeemed the collateral.

Mr. BARSE. Yes, sir. So you will find in all these cases, and I think I can say this without contradiction—you will find that the court decisions, generally speaking, as Mr. Wingo has indicated several times to-day, are thoroughly well settled on the proposition that where the trust relation is established and where there has been something added to the assets of that bank, and that fact can be shown, and it can be shown that those assets or other assets in lieu thereof have been taken over by the receiver, then that claimant has a preferred claim.

Mr. WINGO. In other words, there is no dispute as to what constitutes a trust fund.

Mr. BARSE. No, sir.

Mr. WINGO. And the question is whether the facts in the particular case constitute a trust fund?

Mr. BARSE. Yes, sir.

Mr. WINGO. All the courts hold that if it is a trust fund and you can identify it, the owner of that trust fund is entitled to it and if it is in the hands of a receiver or anybody else, the courts will give him relief.

Mr. BARSE. What this bill does, however, is to depart from that doctrine in this respect, that it gives a preference claim where there has been no augmentation. We think that is not fair to the general creditors.

Mr. GOODWIN. You mean where the drawee has money in the bank and just turns it over to the bank for return?

Mr. BARSE. Do you mean by drawing a check on it?

Mr. GOODWIN. Yes.

Mr. BARSE. That would be one of the classes of cases; yes, sir.

Mr. GOODWIN. But where the drawee gives the bank trust funds in another bank, then there would be no augmentation?

Mr. BARSE. There would be in most cases. Of course, that could result in no augmentation; for instance, where the drawee gives a check on another bank, and this collecting bank takes that check and sends it through the clearing house, and in the clearing house that check in question is used to pay off the checks against it, so that nothing comes back to that collecting bank—there would be no augmentation in that case.

Mr. WINGO. I think the point Mr. Goodwin is getting at is that there is no augmentation where I am a depositor in a bank and I am also a drawee of a draft, and when my bank presents the draft to me and I give my check—a check on that bank against my account. That is simply a shifting of credits on the books and does not change the liability of the bank except as to the person to whom they are liable. As to dollars and cents, it does not change the liabilities or assets one way or the other.

Mr. BARSE. That is correct; and in that connection I have two short extracts from a couple of cases. One is the case of Multnomah *v.* The Oregon National Bank, (61 Fed. 912), where the court, in speaking of tracing the fund of a preferred claimant to the assets taken over by the receiver, said:

> If his money has been paid out, or has otherwise disappeared, it would not be just that he should take, to the exclusion of the general creditors of the bank, who are in no way responsible for the bank's delinquency, and whose deposits may comprise the entire fund which such creditor seeks to appropriate to his exclusive use.

Then there is another extract from the case of Beard *v.* Independent District of Pella City, (88 Fed. 375), where the court said in dealing with the element of a preferred claim:

> The foundation of the right on part of the owner of a trust fund to a prefreence over general creditors in payment out of a fund or estate that has passed to the assignee or receiver of an insolvent person or corporation is, that the trust fund has been wrongfully confused or intermingled with the property of the insolvent, or has been used to increase the value of property, thereby increasing the amount or value of the funds or estate passing into possession of the assignee or receiver; that, if this intermingling had not taken place, the fund passing to the receiver would have been so much less; that the creditors have only the right to subject

the property of the debtor to the payment of their claims, and therefore the creditors can not complain if the total fund coming into the hands of the receiver is reduced by the amount necessary to make good to the owner of the trust fund the sum which was wrongfully used in augmenting the fund or property passing to the receiver.

Unless it appears that the fund or estate coming into possession of the receiver has been augmented or benefited by the wrongful use of the trust fund, no reason exists for giving the owner of the trust fund a preference over the general creditors, and this we understand to be the doctrine recognized by the Supreme Court of Iowa and the Supreme Court of the United States alike.

Now, on this particular question, Mr. Goodwin, that you asked, with reference to the check on the bank itself given by the drawee, the case of Ellerbe *v.* Studebaker Co. that I referred to a moment ago deals with that.

But the owner of a draft collected by an insolvent bank is not entitled to have a trust declared on assets in the hands of its receiver, or to preferential payment therefrom, unless he is able to trace the proceeds of the collection into the hands of the receiver, or to show that the assets which have come into his hands have been directly augmented as a result thereof.

Now, coming to your specific point:

The receipt by the collecting bank of a check drawn against the account of one of its depositors does not bring anything into the bank, and can not be said to augment in any way assets passing into the hands of the receiver. It is a mere shifting of credits.

Now, this tendency which we have been referring to several times here of the courts—and I really do not believe that the Millers' Association or anyone else need have much trepidation or fear as to the outcome of their claims, because the tendency of the courts seems to be becoming more liberal in that respect all along—this tendency has been toward the allowance of preferred claims, so much so, as already indicated by the figures read by Mr. Wingo this morning, that in the fiscal year ending October, 1929, the preferred and secured creditors got out of the assets of the national banks as much as the general creditors did, cutting down their distribution to that extent.

As a matter of fact, I would say that most collection claims do become, and have the requisite elements of becoming, preferred claims, because in most cases there is some phase or other of augmentation.

There is another aspect of this matter that I do not believe we have dwelt on so very much to-day, and that is this, that the contention of the millers' associations, and, of course, they are perfectly right in so contending, seeks to draw a distinction between the depositor who voluntarily goes to his bank and selects that bank as a place to deposit his money, and the forwarder of the collection item who has no such relations with the banker, and the suggestion is, why should this forwarder of the collection item, who is a stranger to the bank, be penalized by having to lose his money instead of having a preferred claim?

I think you have to look at that also from the standpoint of these depositors. Of course, the backbone of our banking system consists of these banks in the little country towns and communities. Those banks are built up by the depositors; they could not have any banks without the depositors to support them. These depositors, in perfectly good faith, put their money in the banks, and, as a matter of fact, as Mr. Wingo suggested this morning, in most cases the associations and forwarders of these collection items are better advised,

I assume, than the depositors themselves, and certainly if the depositors themselves had any question about the bank, they would not put their money in there.

Let us look at the situation from the standpoint of the forwarder. When the forwarder sends his item on, just what does he do as a practical matter of everyday usage? The suggestion is that the forwarder is not establishing with that bank a debtor and creditor relationship; but isn't he? What does he do? He sends a draft with a bill of lading attached, or without; the principle is the same in each case; and he sends it to the collecting bank. Let us assume that it is for $1,000 or $10,000. That forwarder has absolutely no idea at all that the collecting bank to whom he sends that draft for collection is going to collect that $1,000 or that $10,000 and put it in a little bag and ship it to him by express. What that forwarder does expect is that the bank will take that money and that it will commingle it with its other funds and that the bank will then issue and remit a draft or cashier's check of some kind.

What does that mean? It means that at the very outset the forwarder of that item has intended to rely upon the credit of that bank, has intended to establish a relation of credit with that bank, because he expects that bank to collect that draft, the money for that draft, and not take that money bodily and ship it to him, but to put it in its vaults and then to issue a remittance draft or cashier's check.

Now, a cashier's check or remittance draft is nothing in the world but a credit instrument; it is based on the credit of the issuing bank, and it is exactly as much of a credit on that bank as is the case where the depositor goes in and puts over the counter his money and takes a credit on the books for his deposit.

Mr. WINGO. In other words, the forwarder is not willing to risk his customer; he prefers the risk of the ordinary course of the banking business to that of shipping on open account to the customer.

Mr. BARSE. Yes, sir; and he does not expect that that bank is going to segregate that money and send it to him.

If that is the case, it would seem to be absolutely clear that there is more than a relation merely of principal and agent, that there is in reality a credit relation, and the very moment that the bank issues that credit instrument, that cashier's check, and the very moment that the forwarder sends the collection item with the expectation of getting a cashier's check, he anticipates and expects and agree sthat there will be a credit relation between him and that bank.

It is true that he does not get a deposit in the ordinary sense, but there is no question that he does have a deposit in the sense that he permits that bank to take that collected money, mingle it with its own funds, and then send its credit instrument.

If that is the situation, and I think it is, where is there any just ground of discrimination between the depositor as such who puts his money in, and the forwarder who sends his draft on and has money coming in to the bank with the expectation of receiving a check for it? The depositor puts his money in and he expects the bank to honor a check, and the forwarder sends his draft in and he expects the bank to issue a check to pay it, and in each case there is a trusting of or a reliance upon the credit of the bank.

It seems to be a very serious thing, the inroads that preference claims are making into the distribution of the assets to the general

depositors of the bank. Here is your little town, with your depositors there, and under this proposed bill a nonresident, a millers' association or some big corporation which has not built that bank up at all and which is merely using the bank as a matter of convenience, and nothing more, would be obtaining a preference at the expense of these depositors who have built that bank up by their deposits and who have helped that bank perform the service that it does perform in that community. We feel it is an injustice to these depositors that those assets belonging to them, where there is no augmentation, should be taken to pay the preferred claims, that is to say, the claims of the forwarders of the items.

Mr. STRONG. Is that all, Mr. Barse?

Mr. BARSE. Yes.

Mr. STRONG. I would like to make a statement.

Mr. AWALT. Before you go ahead, may I make a statement so that we will be through?

Mr. STRONG. I think we are all making a very hard proposition out of this. Removing all the sob stuff, the proposition is this, that a shipper—he does not need to be a big milling corporation; he might be a poor, downtrodden farmer who wants to ship a carload of potatoes——

Mr. WINGO. Page Chester Gray. [Laughter.]

Mr. STRONG. Any shipper who has a customer in another State, or in another part of the country, decides to send a carload of material of any other kind—potatoes or corn or anything else—after they have agreed on a price, and the buyer says, "Ship it to me and draw on me through my bank, with bill of lading attached." Now, that is done. When the draft with bill of lading attached arrives in the local bank of the buyer, the banker calls up John Jones, we will say, and says, "John, the draft is here from Mr. Brown for $1,000 for a carload of potatoes." The man goes over to the bank on whom the draft is drawn and he says, "All right; I want to take that bill of lading."

Now, if he draws $1,000 out of the bank by his check and pays for that draft with that money, that is a preferred claim under the decisions of the courts, but if he says, as, of course, he always does, "All right; here is a check on my account; take this money out of my account and give me the bill of lading," that is not a preferred claim.

That is such a fiction of fact that it does not seem to me it ought to deprive the man of his money in another State who did not intend to be a depositor in the bank but who is simply using the bank as a collection agency.

It seems to me that it is a very thin wall—and I admit the courts have created it—whether he takes the money out of the bank and hands it back or whether he tells them to take it out of his account to pay for the draft. That is the fiction that this bill is seeking to correct. It makes no difference to the depositor whether he drew the money out of the bank and paid it back or whether he gave the check; no difference at all. Protecting the depositor is purely a fiction. It is just the fact that in the ordinary course of events the banker, nine times out of ten, says, "Give me your check." Of course, very few know the decisions of the courts, and if I went into the bank and said that I wanted to pay that draft, and asked the banker to give me $1,000 and I will pay for it, he would say, "Give me your check."

But the giving of that check without taking the money out first robs the man of his status as a preferred creditor.

So this legislation is intended to protect the shipper who wants to use the banks of the country as an agent in escrow, through which he can deliver his bill of lading and get the money.

Mr. WINGO. What do you propose to do? You talk about a fiction. You want to build up another fiction.

Mr. STRONG. No. I do not want to argue the question here. I just wanted to show the purpose of this bill.

Mr. WINGO. Let us follow your proposition to its logical conclusion. You are talking about fiction. Let us talk about facts. The logical result of your bill under the facts that you have stated would be that here you would have the depositors and other creditors in your town say that they will assume the risks that are ordinarily incident to a common banking operation of a man who is dealing with their bank, and that they will become the insurers of the safety of the other man's agent and guarantee the faithful performance of his duties.

Mr. STRONG. Not at all, because when this man gives his check, it gives him the right to the other man's property. When he gives his check, he intends to take and actually does take $1,000 from the bank, and thereby takes it away from the assets of the bank.

Mr. WINGO. As between those two, it is a different proposition; but when you say that the general creditors, including the depositors, shall bear the burden of that, you are making them assume the burden of a transaction that they have nothing to do with.

Mr. STRONG. I do not say anything of the kind. I simply say that when a man sends goods into a community and draws through a bank by sight draft, and the banker presents the draft to the man upon whom the draft is drawn, when that man takes from his funds $1,000 to pay for the draft and gets the bill of lading, that actually reduces the funds or the assets of that bank. Then, when the bank fails without the bank having sent that $1,000 to the owner of the draft, that is not a wrong against the local depositors.

Mr. WINGO. In other words, you do not want Paul robbed, but when the bank fails somebody has got to have dividends shaved down, and you want Peter, the depositor, to lose?

Mr. STRONG. We do not rob Peter at all. Peter never had it.

Mr. WINGO. If you take that money out of the general assets of the bank and pay it to the forwarder, you reduce the dividends to the depositors and general creditors that much, and if that does not rob Peter——

Mr. STRONG. But if the man that gave the check for the purpose of taking the draft had said, "Give me the money first, and I will put it back," that would be a preferred claim.

Mr. WINGO. But you know he is not going to do that.

Mr. STRONG. But it is silly, when his intention is to pay that draft, to rob the owner of the goods simply because the purchaser does not take the money out first and then hand it back.

Mr. WINGO. That is not the transaction that determines it at all.

Mr. STRONG. But that is the purpose of this bill, to carry out the intention of the man who seeks to pay for the bill of lading when he gets value therefor.

Mr. WINGO. At the expense of the unsecured creditors.

Mr. STRONG. Not at the expense of them at all.

Mr. WINGO. If you will put in here a phrase providing that that will not reduce the dividends of the unsecured creditors, then I will not object to the bill.

Mr. STRONG. The purpose of this bill is to keep the proceeds from the goods shipped into that town from being applied to the payment of the general creditors.

Mr. WINGO. But the people in that community are not insurers; they are not so anxious to get stuff shipped in to them at a profit that they will undertake to guarantee against loss the ordinary risks of business.

Mr. STRONG. I just simply ask that they be not given the proceeds from the other man's property.

Mr. WINGO. The courts say that they shan't be; I will agree with you on that. Whenever you show that they are given the proceeds of the other man's property, that is an augmentation of assets. However, those goods do not come into that bank.

Mr. STRONG. The goods come into that town, and one man takes them and seeks to pay for them, and the law steps in and says no.

Mr. WINGO. If you will tell the depositors that that is what they are going to have to do when a shipment of goods comes into town, they will say they are going to give their money to the Red Cross.

Mr. STRONG. That is a fallacious argument.

Mr. AWALT. I would like to add here that a good deal has been said about the uniform collections bill, and I want to put the comptroller's office on record as being opposed to that bill as well as to the Strong bill. That also takes away from the general creditors and adds to the preferences that are being created.

Mr. STRONG. I know that the American Bankers Association wants to have all collection matters as preferred claims, and I was only seeking to go so far as to reach the title to property.

Mr. WINGO. Do you favor that?

Mr. STRONG. Let me finish, please; I do not yield. This only affects drafts that have title involved, but it may be that in order to get the support of the American Bankers Association, I will have to go a step further and take in all drafts.

Mr. AWALT. I wanted to make clear the position of our office in regard to that, and if it comes up we want to be heard on it.

Mr. STRONG. I just wanted to get my position into the record.

Mr. WINGO. If you are stating your position, will you please state it on that other question? Are you in favor——

Mr. STRONG. I am not giving any testimony, Mr. Wingo.

Mr. WINGO. I notice you are not. You stated that you were giving your position, and yet you are not.

Mr. STRONG. I know you like to be a cross-questioner.

Mr. AWALT. If you are going to have legislation, we would rather see legislation doing away with the preferred claimant.

Mr. STRONG. I know you would.

FURTHER STATEMENT OF E. H. HOGUELAND

Mr. HOGUELAND. You have been very gracious in the time you have already given us, but I just want to add that the chairman hit the nail on the head a moment ago when he stated his purpose in introducing the bill, and the brief that I filed giving the decisions of

the State courts in Kansas, Missouri, Arkansas, Montana, Illinois, and in various other States shows that those decisions have recognized the fallacy of this thing of taking your money out over the counter and handing it right back in order to create a trust fund, and the State of Kansas, through its supreme court, and these other State courts, have said that that is an unnecessary transaction and that the funds are augmented when a man gives his check to take up a draft, and it is on the theory that when the check is drawn to pay for the draft the funds are diminished to that amount and shortly thereafter the bank issues its cashier's check or draft and the funds are augmented. The State courts have been recognizing that more and more, and I agree with what counsel for the banking department has said as to the Federal decisions; there is no question about that, but we are quarreling with the Federal decisions; they are out of tune and out of harmony with the decisions of the State courts, in some 12 or 14 States, and the State of Wyoming has recently adopted the bankers' code, making 12 in all, so that there are some 25 different States that are now on record in favor of recognizing these claims as preferred, and your bill, Mr. Chairman, is simply in harmony with the trend of modern decisions.

Mr. STRONG. I wish to place in the record here a brief filed by the Southwestern Millers' League.

(The brief referred to is here printed in full, as follows:)

BRIEF FILED BY SOUTHWESTERN MILLERS' LEAGUE

PRIORITY OF CREDITORS—STRONG'S BILL H. R. 5634

While there is some conflict in the decisions of the State courts over the right to preference in the payments of items sent for collection in the case of insolvent banks, many of the State courts hold that when a bank receives a draft or other item for collection and remittance from a party who is not a depositor of the collecting bank, and accepts in payment for such item a check drawn on itself, a trust fund is created in favor of the drawer; that the relationship created between the parties is that of principal and agent, and not debtor and creditor.

One of the leading cases is that of Goodyear Tire & Rubber Co. *v.* Hanover State Bank (Kans., 204 Pac. 992) where the Supreme Court of Kansas held:

"Where a bank holding a claim for collection receives in payment thereof a check upon itself drawn by the debtor against a sufficient deposit, there being enough cash on hand to meet it, charges the amount to him and attempts to remit it to the creditor by cashier's check, but passes into the control of a receiver before such cashier's check in due course of business is presented for payment, having at all times had cash on hand in excess of the amount thereof, the creditor is entitled to recover the amount of his claim from the assets of the receivership as a trust fund in preference to general creditors."

Another recent decision is by the Supreme Court of Iowa in the case of Messenger *v.* Carroll T. & S. Bank (Iowa, 187 N. W.,) 545, where the Supreme Court of Iowa held:

"Where a seller sent its draft with a bill of lading attached to a bank, directing it to collect and remit and not to surrender the bill of lading, except on payment, and the bank did as directed, remitting by draft on another bank, the collecting bank was an agent of the seller, and title to the proceeds collected remained in the latter, and did not pass to the receiver of the bank."

In commenting on the Messenger case the Supreme Court of Iowa said:

"The method of collection was that the Swaney Co. (drawee) drew its check upon its own account in the collecting bank for the payment of the sight draft. It had an account of $4,500 against which it drew. Its check was charged against this account, and the amount thereof was put by the collecting bank into the form of Chicago exchange for the purpose of remittance. That this method was the full equivalent of the payment of money by the Swaney Co. and served to

COMMITTEE ON CLAIMS

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T. BROOKS ALFORD

MONDAY, MAY 12, 1930

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE COMMITTEE ON CLAIMS,
Washington, D. C.

The subcommittee met at 10.30 o'clock a. m., Hon. U. S. Guyer (chairman) presiding.

Mr. GUYER. This is a hearing on H. R. 5229, a bill introduced by Mr. McMillan, for the relief of T. Brooks Alford, authorizing the payment of the sum of $4,000 to constitute reimbursement to Mr. Alford because of money expended by him from his personal funds and losses of personal property sustained as a result of his services as a consular officer of the Department of State in Russia during the World War.

STATEMENT OF HON. THOMAS S. McMILLAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF SOUTH CAROLINA

Mr. MCMILLAN. Mr. Chairman and gentlemen of the committee, this bill was introduced by me as a result of Mr. Alford's experiences.

As stated in the bill, Mr. Alford was during the war a consular agent for the State Department, and during most of his time in the service he spent it in Russia and in the Far East.

That experience of his, to me, is almost a romance. He has gone to Italy from time to time, and in view of the length of his services and of the experiences he had, I thought it best to have Mr. Alford appear in person before you gentlemen in order that you may grasp or visualize the experiences he has had.

Mr. Alford is here this morning, and if it is the pleasure of the committee to hear him I shall be obliged if you will allow him to make his statement at this time.

Mr. GUYER. We will be glad to hear any statement Mr. Alford has to make.

STATEMENT OF T. BROOKS ALFORD, CHARLESTON, S. C.

Mr. ALFORD. Mr. Chairman and gentlemen of the committee, it is a pleasure to have this opportunity to explain what Mr. McMillan has earnestly tried to understand, and in doing so I want to say this, that whatever I say shall be like describing the unusual.

It necessarily will involve a good deal of the political development of Russia, and in my experiences I found it is difficult to explain that. But there is a difference of amounts involved here that Mr. McMil-

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lan and I have not yet gone over. He has named in the bill the amount of $4,000, and I have set a different figure. My figure is $10,000. That is based upon an estimate.

I am speaking from 10 years' memory. I have no figures, of course, to speak of, and I necessarily speak a little nervously, and I hope you will ask me questions, so you will be able to understand my case.

I did not always have this accent, but I begin to speak with it when I begin to cover in my mind those two years I spent in Russia.

Mr. GUYER. Let me ask you, Mr. Alford, what official position did you hold?

Mr. ALFORD. If you please, Mr. Chairman, I want to read you my credentials. I will read you first a letter I received from the Department of State, as follows:

DEPARTMENT OF STATE,
Washington, June 3, 1916.

Mr. T. BROOKS ALFORD,
441 House Office Building, Washington, D. C.

SIR: Referring to your application for appointment to a subordinate position in the American consular service, the department takes pleasure in offering you the position of vice consul and clerk in the American consulate at Riga. Your compensation as clerk will be at the rate of $1,500 a year, beginning on the date of your arrival and assumption of duty. No compensation attaches to the position of vice consul except when in charge of the consulate during the absence of the principal officer.

You will be allowed mileage at the rate of 5 cents a mile by the most direct route from your home in this country to your post, but the amount of your account for mileage can not be paid you until after you have reached Riga.

You are requested to inform the department promptly as to the date on which you can leave for Riga.

I am, sir,
Your obedient servant,

WILBUR F. CARR,
Director of the Consular Service
(For the Acting Secretary of State).

This is my letter appointing me, and I have here the passport which was given me, those being the only two papers of any nature whatsoever given me by the department. After that my credentials were delivered to me in Russia, going through the usual channels to the Imperial Government; that is, the usual channels adopted by the department in such matters.

I accepted that offer and left immediately; that is, as soon as I could prepare myself, after two weeks, purchasing my clothes for a stay of at least two years in Russia.

I landed in Christiania. At that time the war was going on. This country was not engaged in the war, but the World War had begun.

Mr. GUYER. This was in 1916?

Mr. ALFORD. Yes, in June, 1916. It was a dangerous thing to travel on the sea at that time, but I took a neutral boat and landed in Christiania, Norway.

I traveled through Norway to Petrograd, and in Petrograd I learned for the first time that my post was to be only on the Russian front. It was quite a surprise, and necessitated two weeks at least that were required to get the necessary papers to go into the Russian front.

As it turned out, I arrived at my post, and it was impossible for the principal consular officer, Mr. Jenkins, at the time, to find any

information of my expected arrival, due to the communications in that part of the world, as the result of the War.

After presenting my credentials to him I went in as vice consul. In about two weeks I went to Mr. Jenkins and told him personally, as a friend—I had never met him before—but I said I never expected to find myself in this part of the world, this close to the front, and we were not at war with Russia, and I did not have any desire to be bumped off by these Russians.

I said, "I have no desire to inconvenience you, but I heard you say you had obtained permission for leave of absence, and I just want to say I am thinking very seriously about it, and I would like to return to America."

Gentlemen, at that time the shells from the German Army were bursting right over the city. The wounded and the ambulances were so cluttering up the streets that I could hardly find a carriage to take me from the hotel where I arrived, under guard of the Russians, who gave me a place to sleep there, over to the consulate.

He said to me he did not like to talk of the war. I noticed that. You can not exactly visualize the scene.

I did not want to tell Mr. Jenkins, "I am going back to America." I waited a few days, and finally I told him I did not want to stay, and I knew nothing that would keep me from going back.

I did not go back to work at that time, and when I saw that there was such a chance that I would take to be bumped off, I was not particularly interested. I did not want to show a yellow streak. But Mr. Jenkins was very nice; he was nice enough, and eventually he told me, "My only desire is for you to stay, because I have two children, one about 6 and the other about 8, and their mother is buried over here, and I expect to take her body back to the United States, as soon as conditions will allow me to do so. Will you not let me take these children back? If you do not stay, I can not go."

After talking with me for some time, I agreed to stay. I said, "What arrangements can be made about expenses? You understand I am drawing a very small salary, which hardly pays."

He said: "Under the regulations you will be allowed half of my salary, which will bring you up to $1,750. And in addition to that, I will let you take over my apartment. I will make all those arrangements." That was some inducement to stay, otherwise I do not believe I could have stayed.

He said, "For some time we have been trying to get the department to give us a new post allowance to take care of this office, which is the only one right now on the Russian front. But so far we have not obtained any raise." However, I agreed that while he was in America I would stay.

He left with the two children and turned over the interests of the Germans, the Austro-Hungarians, and the French and British Governments to me as vice consul. Those arrangements were due to the fact that the other allied nations had withdrawn their consular officers and our Government had taken that work over. I think I was the only American I know of who was in the war zone.

Mr. CHRISTGAU. Where is Mr. Jenkins now?

Mr. ALFORD. He is in Canton.

Mr. MCMILLAN. He is still in the service?

Mr. ALFORD. He is still in the service, in Canton, China.

Mr. CHRISTGAU. I was in Sweden last summer and one of the members of the Consular Service told me that he was in Russia during the war, in Leningrad, and lost all his property and he had never recovered any of it. I wondered how many were in the service who had an experience similar to his and to yours?

Mr. MCMILLAN. I may say, in reply to that inquiry, there is a bill now pending in the Committee on Foreign Affairs of the House very similar to this bill. That bill is an omnibus bill to provide relief for a great many of these men, I suppose probably a dozen men and women who had an exactly similar experience as Mr. Alford, who at that time were stationed, some in Russia, some in Austria-Hungary, and some in Siberia.

I do not know what action, if any, has been taken on that bill, but it is an omnibus bill seeking to do the same thing this bill does.

Mr. CHRISTGAU. It occurred to me something should be done to repay those men who lost their property through no fault of their own.

Mr. ALFORD. I was talking about the arrangements for compensation, which Mr. Jenkins was unable to get over. Through the departmental regulations it was necessary for our estimates to be submitted through the Moscow consul general, and I was assured of an increase in my salary to take care of the emergency at least before he left, or as soon as he got back.

He left me in Riga in a responsible position. It was eight months I was there.

While he was away it fell upon my shoulders to look after the best interests of five nations.

My expenses, as I say, were jam up. I was not using my own funds. At least he financed me from time to time above my salary before he left, and he left six weeks after I arrived.

Mr. MCMILLAN. Did you get any compensation at all from the other nations while you were serving these other nations?

Mr. ALFORD. Nothing. It was just a pure courtesy by the American Government.

After he had been away for three or four months—I am going to estimate; I have it here, but it would take a long time to get at it. The Russian Emperor was overthrown at that time, and as the result of that prices went scooting.

I found it necessary to live on less than what a common soldier was eating, because of the fact that I could not use the things, even though I am an American, I could not use them. If I could find the supplies I could get them from the officers, but I had to live on less than the common soldiers had, because of the disturbing conditions in Russia. Later, when America came into the War, also my prices go always up.

We were within the war zone. We were getting our supplies one time through the natural channels, which were very poor, because of the revolution, and when those broke down even behind the lines the peasants would not sell food to us. Food was buried to keep it from being confiscated or taken by the imperial authorities, at first, and later by the revolutionary authorities.

I had to spend my salary and the money I had taken with me. I estimate I had when I left America, I fixed the estimate at one time at $1,500. That is based upon my cash money I had to spend at the time. I carried away enough to provide for my return to America in an emergency.

Mr. Jenkins got back and about four weeks after it seemed that Riga was going to have to go to the Germans. Dissension had had occurred in the Russian army and it was impossible to get food even for money or love. They could not find any. The soldiers were throwing their guns down, and they would walk back home, leaving the cannon and ammunition lying where they were. For months they had not had anything to eat except what they could go out and pick up.

I left and went to Petrograd. I will stop here to say that before two days had elapsed following our entrance into the war, I cabled the State Department, and I have a copy of that cable with me, furtunately. I do not know how it came about, but a man sticks to those things pretty well, and I found this in my purse. I have a copy of that cable which I wired the Secretary of State out of my own funds, offering my services in any capacity. In that cablegram I said:

SECSTATE,
Washington.

Twelfth. Call me if I can serve United States better in another capacity. Prefer Navy.

ALFORD.

APRIL 12, 1917.

Then I received a relpy. This cablegram I have just read was sent to the department and two days after I had received a cablegram that we had entered the war. Then I had this cablegram in reply. This is a paraphrase of it which I am going to read to you, which does not need to be published. It said:

AMERICAN CONSUL, *Riga:*

Following from the department: "Circular, 13th, requests reaching department from diplomatic and consular officers for permission to accept commissions in Army and Navy. While appreciating patriotism by which inspired in view of trained character of men in this Government's foreign service and fact that our national interests require efficiency in that service no less high than in military department, will grant no requests for release from service or accept any resignations to enable officers to enter military or naval service during existence of war. When for special reasons Army or Navy requires services of members of diplomatic or consular organizations, department will specially designate officers who can be released without detriment to service. Signed Lansing."

FRANCIS.

Mr. MCMILLAN. Let me ask you this question. You offered your services through regular channels to the State Department to be relieved from your duty with a view of entering the armed forces of the Government and received this reply saying, in effect, that your services were needed as badly in the Consular Service as in the regular military forces?

Mr. ALFORD. Yes, sir. I took the examination for assistant paymaster in the Navy here in the navy yard before I went away, and I was positive I could get my commission if they would allow me to resign, but the Secretary said they needed me worse there.

I will just say this: As the result of that telegram I was not allowed to come out of Russia for over another year. I was eight months in Riga, and was there altogether for almost another year.

I went to Mr. Francis, the ambassador, and he thanked me for my services in Riga. He said, "Mr. Alford, I want to do what I can for you and Mr. Jenkins, and especially you should cooperate with my

office in Riga," and he gave me a whole lot of compliments. I said, "Mr. Ambassador, I have already offered my services in any capacity, and if you think I can be transferred to the Navy I would like to have it that way."

When I told him that, he said, "I have a letter from Consul General Summers in Moscow." He said, "Summers is about crazy. He is begging for some one there, and some one should go." He said, "You read this letter."

As a result of that conference he said, "I will send you down to Moscow. I have no authority to assign you, but I want you to go on a diplomatic mission for me to Finland. I had you picked out, but we need you in Moscow. Summers has to have somebody there, and it will take us two months to get a man here, and when he gets here he will not do us much good because he will not know the language."

So I went to Moscow and was six months in Moscow, and then the Secretary of State lost connection with my record.

I had to go then to Kiev. He said, "I want you to go to Kiev. Mr. Jenkins is down there, but he has no money."

So I left and went to Kiev under the instructions of the consul general's office, and the Department of State has not any record of my assignment or my designation to Kiev.

Kiev was taken by the Germans, and I came back to Moscow, and then Mr. Summers told me, "I want you to go to Chita." I went over with the bank officials and the consular archives and I stayed there.

Then I was assigned to another post and I got a telegram in the south, and I got this telegram ordering me back to the States. I left Russia and came back to the States and got six days' leave and then was sent to Copenhagen, and my last post was at Copenhagen, in Denmark.

I want to go back a moment and say this, that in those times I would have resigned, if it had been possible, and would have done my part if I could have resigned, in the Navy. But I had this order and I could not leave. I had not money to spend.

Mr. Jenkins was only with me a short while in Riga, and these officers would say to me, "We realize your needs, and we are going to get you a raise." I got from $1,500 to $1,800 and when I left America I was getting the same thing when I went in the service. I had no desire to make money. I got $1,800, and I never got any more.

I continued to travel. I went around through Japan and went over to San Francisco, and then I went back again to Europe, and when I got there the second time, living expenses had gone way up. At that time the Department of State was unable to get through the bill which they finally got through about four years after the war, raising the consular officers' salaries and expenses, but I did not get any benefit from it.

I would like to give you an itemized statement of what I spent, and I can give you an idea.

You know that $1,500 or $1,800 is an estimate based upon normal times and the normal cost of officers living abroad working for the department. The war was like an earthquake.

I came home, and when the Russian revolution came on, the officers came to my office and said they were looking for me. They said, "If you will give me a piece of paper showing, with the American consular seal on it, that I am connected with the Government in any way, I will give you all my jewels, all that is in my bank account and my whole land."

Mr. RAMSPECK. Those were Russian officers?

Mr. ALFORD. Those were Russian officers; yes. They said, "We want to get out of this country." I had to employ men to clean the snow from in front of the consular office in Riga. Those men came and asked to be allowed to join the American Army when we came into the war. I had eventually gotten through a cablegram from Washington that we could not accept them and I showed them that. But they would not believe me for a long time.

Those men came to me everywhere and said, "Will you give me a paper?" I could have brought out of Russia a fortune, in works of art and jewelry.

I have been captured by the Bolshevik, and was sentenced at one time to be shot. I spent six weeks in a Russian jail. I have been a German prisoner, and each time in traveling from Petrograd to Riga and back to Moscow I have had to pay. When it came to buying anything in these different places I had to get a man to go with me and talk with the commissar.

I can give you one illustration. In Smolensk I was sent south to Kiev. They took me on the train. You remember each one of these commissars is a czar of the town in which he lives. He has charge of the bread, he has charge of the rooms, and in order for you to leave one of those towns, before you can do so, you must register with the commissar and get your food card.

I arrived in Smolensk on a troop train, guarded by Bolshevik soldiers, and they took me off and carried me to the commissar and they put me in jail, and looked upon me as a spy.

I had 8,000 rubles with me that belonged to Mr. Jenkins, and some official correspondence.

I spoke Russian; that is why I happened to be there. I said, "Comrade, listen; I am an American, and over in America we have no emperor and no czar. I want to get out of here." I said, "Could you go up and talk with the commissar for me?" The Russian peasants are very simple people. They do not know how to read or write. They are just like children.

To do that, I had no allowance from the department, and I had to pay him a hundred rubles, or 50 rubles, all along the line there. In Russia it is not against their religion. They have been taking it all the time.

Under the emperor, if you wanted anything like that done, that was the way you did it. I did not make a practice of this in Russia. In my whole experience I never bribed anybody yet. It was only another of the revolutionary conditions, where it was necessary to fight fire with fire.

I spent money out of my own pocket. My salary was $125 and then $150 a month. The department allowed me 5 cents a mile for traveling expenses, and I used to pay 50 cents a day for meals. Now I am glad to get meals for four or five dollars a day. I used to pay $2 a day for a room, and now I am glad to get a room at anywhere from $5 to $10.

Now, when my salary check comes through, I can not exchange it. I have brought here some money. Here [indicating] is some early Russian money. This was just some of the Imperial money. That

was Imperial money, and it was there for a long time after the revolution. Then the Russian Government made some more money, and after the Bolsheviks came along, they had any kind of money. They would accept this [indicating] for money. It fluctuated so that they used any kind of money. Here [indicating] is a coffeehouse check, and that would pass as money. That is a coffeehouse statement. This is money that was all silver, that had been withdrawn before the war. Gentlemen, at that time our dollar was worth three and a half of theirs, and at one time it was woth 20 of theirs. In between times I crossed the borders in Russia, where it was necessary to use three or four different kinds of money. I could not get by, because I had to have their money. Sometimes they will not take money and sometimes they lacked money, and it was a matter of barter and trade. They would take anything. If you needed a fur coat they would trade with you for that.

However, that would not get you far unless you had what they wanted. Those were the conditions, as I went from one town to another, speaking Russian. That [indicating] is what used to be half a cent, that is half a cent, and that is 5 cents there. Now, if you could visualize the situation, I crossed into one State, and it would be as though Washington should be the center of a State and you could not go out of Washington without using a different kind of money. If you should go out from Washington you would have to use a different kind of money when you went over to Alexandria. That was the condition over there. It would be as though you could not get any communication between those points, and you could not pass between them, unless you had a pass. If you did, you were liable to be arrested every time you did it, on suspicion. I was arrested, and was put down to be shot. I was at Smolensk; I stayed there and came very near freezing to death at night. I spent four nights in that place, without sleep. I did not have anything to eat for two days there except fat meat and a piece of Polish bread, which a Polish officer, a traveling companion—he was traveling as a soldier, with his face smutted—gave me. He had some food with him which his wife had fixed up.

Then I had to go in before the committee. They were in a beautiful home up there. One of those big bucks was making coffee on birds-eye furniture that had been imported from France. That was before the commissar, and he said, "What are you doing in this part of the world?" I said, "I am an American consular officer." He said, "So you are an Americanista." I said, "Comrade, I am an American; I have come over here to help you people, because in America we have no Czar, but we are simple working people like you." I said, "You are sick and have your troubles, and I am over here from my people to help you out." He said, "I would like to have your picture." I said, "Yes; take my picture." Finally, I went further down front. I was there all day, and they sent me back. They would not get satisfied. They said, "What have you here?" I had some money, and I had some other papers in my files, but I knew they would not understand them. They then sent me back under guard. The next day a man came who spoke French, German, and English. He spoke to me in English, and said, "I have been sent from the commissar, and we want to take you to a

hotel where we can give you a nice place to stay." I said, "That is fine." He was evidently one of the Imperialists, or I figured him to be an Imperialist.

I knew that he needed money very badly, but his appearance and everything indicated that he was a gentleman. I said to him, "All right; if you will be good enough I will go with you." He carried me up to where they had the Belgian mission and the French mission, up in that hotel. They welcomed me in and put me in a room downstairs. There were no bed clothes to sleep on and it was cold. He said, "I will bring you down something to sleep on and you can eat over at that place." I stayed in that room for two days and one night, and money was the only thing that brought me out. I had to give them money. Now, the Belgians, the French, and the British missions were there. They had hooked them up, but I do not know why they did that. They said, "See what you can do." The guard took me back to the commissar and I again stated my case. The result of it was that they said this, "We will give you some dinner here." They kept me there under guard for practically a week, and I did not get anything to eat except once a day. They would give me a bowl of soup or something like that. I finally got acquainted with the commissar. They got confidential, and I talked with them. They said, "We will try to get a wireless through to Petrograd to let you pass."

Mr. CHRISTGAU. Where were you located at that time?

Mr. ALFORD. At Smolensk. I got hold of the guard, and he said finally, "I will go with you." They carried me to the station and when I got down to the station they started a war down there. A fellow pulled out a pistol, and he said, "He is a Bolshevik and he can not go on this train." Now, the trains were owned by the conductors and the engines were owned by the engineers, and if you come in there you can not buy the old ticket that they used to have, but you have to pay them what they demand or you do not get on. I had not paid and so they pulled their guns. They started in with a war and the result of it was that they slipped me into a box car, but I had to give them money out of my own pocket. The department's regulations did not provide anything for that. They did not provide anything for that sort of expense, I went on to Minsk, but in Minsk the conditions were the same. We did not find the Army because it had gone to "pot." The snow had covered up the trenches. There were about 1,000 horses in the town of Minsk that had been left there when they were trying to get to Kiev, but they could not get out. They would give you some of those horses if you would take them and feed them. The soldiers had left, and were going back. You could see the German trenches, with the snow coming out of them. They had established a no-man's land, or a place for them to trade. They would swap beer or whatever you wanted. When I got in that town, I knew I would be right up to the front. The German officers were already in the city at the time when I got in there on the railroad train. I may have passed them on the street at that time but I did not know them, and they did not know me.

On the last train going out of that place, I got with a Jew, one of the most persecuted people in Russia. He was a Jew who had been in New York for a little while, and spoke a little English. He said to me, "I will get you out; I have a friend who is a conductor, and I

will try to help." He did not care anything about money. I was able to be put into a Russian box car. He had his family down below, with his geese and chickens, and they put me on the baggage rack. I rode on that baggage rack for two days and nights, getting down only to relieve myself, and taking water whenever he could hand it up to me. We got up near the line of the Russian Army, trying to get to Kiev, where they stopped the train. Then there comes on a big fight between the Kerenski Army and the Bolsheviks at this place. When I got to the station there came a big Cossack officer. You can not imagine those conditions. There was represented every nation of oriental people. This Cossack officer says, "Who are you?" He was drinking at the time, and he said, "You are under arrest." They wanted to take me away. As a result of that, I went into the car and they opened up with a machine gun fire that took all of the glass out of the windows. At that time, I was liable to be arrested, of course, because foreigners were strangers. I could talk Russian, and, thank God, I talked myself out of that predicament. But it is not a joking matter, gentlemen, I can tell you.

Now, I am not asking this committee to give me one thing that I do not think I am entitled to. I do not want any favors. For 11 years now I have not asked for any favors. I came back to Washington after the war, after having served in those different countries, and I said to Mr. Carr, "I have but a little bit more than my allowance." He said, "Mr. Alford, we realize that you have had an unusual experience."

Mr. McMillan. Mr. Carr was then Assistant Secretary of State, was he not?

Mr. Alford. He was director of this service. I think since that time he has been made Assistant Secretary. He said, "I suggest that you make up your accounts, according to the records, showing the difference, and ask your Congressman if he will introduce a bill to make it up." He said, "We have no provisions for that in the department, but we are very much satisfied with your record." He said, "I would like to talk to you about it." He said, "I wish you would step up and see Mr. So and So," meaning a man in the Far Eastern division. That is the division that was in charge of the foreign service in Asia and Russia. I went up and talked with them, but my nerves were in such a condition that I am afraid I did not give them what I am giving you to-day, or what I am trying to give you to-day—that is, a general idea of what took place. I want to say this, that Mr. Carr, at the time, realized the conditions.

Now, the immediate inquiry comes into your mind why I did not ask for it then, and I will tell you as nearly as I can. I believe Mr. McMillan may have asked that. When I came out of the service, nothing had been done for the soldiers. I had a brother in the Thirtieth Division who was six times wounded. He had had no relief, and there were boys of my acquaintance who had been in the Army. Under those conditions I did not have the nerve to come to Washington and say, "Gentlemen, pay me some of my losses." I could see what would happen. There would be publicity, and my people down there would not know what it was for. Rich men gave and poor men gave, and I had to. I bought war-savings stamps, and I did everything that everybody else did. I believe I strained

a point. Now, what I am asking for to-day is not to give me money for the losses I have had, because I have given that freely for 11 years. I waited 11 years. Now I see that you have done something for the other service men, and I think it is only fair now that I should come here. If you do not think that I am entitled to the things that soldiers were entitled to, it would be a wonderful thing if I could be designated in some way. I was an outsider. Now, if I go to a soldier's reunion, I am not known there, because I do not belong in the regular service. I am not known there, and if I go to a bank I am not known there, either. It is an unusual situation, and I am asking you gentlemen to return to me only that amount of money which I took out of my own pocket to save my own life in carrying out orders from this Government.

To have refused to carry out orders, gentlemen, would have caused me to have been put under arrest. I registered under the draft law, and fulfilled every requirement. I spent $50 more money trying to get myself arrested by my own draft board. They had never received my registration, which had come to me in Russia. I spent $50 to go from my home town to the State capital to get my registration straight. If I had resigned, as I have said, I would have gone to jail. Now, if you gentlemen could see where you could make me an allowance I think you could make it to me on this basis, first, there is here, or I will submit here, or Mr. McMillan will be good enough to submit it, a statement of what I had in the way of personal losses. I would like to have what I estimate I lost over there. I left this country with a certain amount of money which my export declaration will show definitely.

Mr. Ramspeck. How much was that?

Mr. Alford. I had at the time, $1,500. This is my estimate.

Mr. Ramspeck. That is the amount you took with you when you left this country?

Mr. Alford. No, sir; that is not what I took. I did not have that much when I left in cash. I have to estimate it. I got it from three different sources. I have an affidavit that will show some of it. Then I have some from my mother. Some of it was from my personal account.

Mr. McMillan. Mr. Ramspeck is trying to get at this: He wants to know how much you spent out of your personal funds, and not necessarily the amount you took with you. What was that amount—$1,500?

Mr. Alford. Yes, sir; that is my estimate.

Mr. Ramspeck. The claim set up in this bill is for $4,000; where does the other $2,500 come from.

Mr. McMillan. $1,000 of that represents the loss of personal property that he had with him, including clothing and various other valuables that he carried with him into those foreign countries. $1,500 represents medical attention and care. This man has not recovered from that shock yet.

Mr. Ramspeck. What I am trying to get at is the amount. As a matter of information, I think the record should show just how those sums are arrived at.

Mr. Alford. I will add one thing to what Mr. McMillan has said: I would say that I left here with about that much in my pocket, and when I got back to San Francisco, from my Russian experience, I

owed a man on board ship $50. My drawing account with the department, I afterwards learned, was $125. I had $75 above that allowance of expense money.

Mr. McMillan. And that included the salary you got.

Mr. Alford. Everything. It was almost two years. I went out of the country with clothes, or with sufficient dress clothes of my own, including two coats, and two pairs of shoes, or four pairs of shoes, I forget which. I had everything necessary for two years. When I came back I was broke. And I never had, from the day I left Riga until this, what a soldier could get to eat or get to wear. You might think it would be impossible to believe that an officer could get his salary reduced, but my singleness, and being alone, was causing me to have to jump from one place to another in the war zone. I never had to eat what I could have gotten as a soldier at $30 per month. I had no clothing. When I got to San Francisco I had only one suit of clothes that I could wear, and I owed a man $50.

Mr. Rampeck. Since your return, Mr. McMillan has suggested that you have incurred an expense of about $1,500 for medical attention.

Mr. Alford. I will tell you about that. When I got back I spent $5,000 for medical expenses alone. I have not worked regularly.

Mr. Ramspeck. Do you have any evidence, Mr. McMillan, to offer for the record, on that point?

Mr. McMillan. No; I have none here, but that can be submitted without question.

Mr. Alford. I came here and was in such a condition that the Senator from my State gave me a letter to the Walter Reed Hospital. They told me, "We want you to come in here for six weeks for investigation." The doctor said, "You are shell shocked." I had heard that "shell shocked" meant a yellow streak, and I told the doctors that I did not want to stay there any longer, and I started to leave the place. The doctor said, "I want you to go to Doctor Parker, the nerve specialist." Doctor Parker said to me, "You have got to go to a hospital or somewhere and rest." He said, "I want you to go to a warm climate." He asked me where I was from, and I said, "from South Carolina." He said to me, "I want you to go down there, and follow this prescription, 'eat, sleep, and secure all the rest you can. That is what you want.'" I went, and for six months I did not do anything.

Finally, I got my nerves in such shape that I decided I would go back to school. I had no one left at that time, except my mother. She was living. So I went to school at my own expense, and when I graduated, I took my last examination in bed. I have a catch in my back due to exposure. It does not come on me now. I took my examination, as I have said, in bed. Then, from 1921 up until 1927, I got along fairly well. My practice brought me some money for a young man. I practiced by myself.

Mr. Ramspeck. Are you a lawyer?

Mr. Alford. Yes, sir; a lawyer. Then I went all to pieces again. My doctor told me 15 months ago, "You had better quit." He said to me, "The thing for you to do is to rest; you should go and sit down, and you should not do anything." I would not take his advice, because I like to work, and I got up again. That is when I came to Mr. McMillan. I said, "I have the claims of soldiers in

my office, and I have had them for six or seven years." I said, "This may not interest you, but when Congress, at this late time, is paying out money for these purposes, I would like to give you a general idea of my claim." I then gave it to him, as I tried to give it to you gentlemen. I think that I would say that if you gentlemen would see fit to allow this claim I would estimate $10,000. I do not ask you to give me that as a favor.

I say this, that under those unusual conditions, I took out of my own pocket somewhere around one-half of that sum, and handed it over to the Government 11 years ago. It was a loan. This is not a claim for damages, but this is asking you to do what any man would have done at that time, to give me back what I advanced. If you see fit to add to that interest, that should be done. You gentlemen will take into consideration in the matter of that interest that I if could have had that interest in Russia I could have brought out of Russia jewels such as would have never required me to come to Washington at my own expense to tell you about my losses. If I could have had that interest, I would not have needed it, You might be giving me twice as much as I gave the Government, in dollars and cents to-day, but it would not give me back even 1 per cent of what I could have made if I had had the money then. I am not a rich man, and have nothing to-day except what I can earn. Now, then, I am asking for the principal amount of $4,000, and Mr. McMillan will submit a statement of that. Then, I have an estimate of around six or seven thousand dollars, which I will submit later, if you gentlemen desire to see it.

Mr. Guyer. You had better submit a sort of itemized statement.

Mr. Christgau. I believe you stated that you made a loan of $5,000.

Mr. Alford. I figured all of my expenses over there, over my salary. I figured it just like a soldier. If I had been in the Army or Navy, they would have given me a new suit of clothes when I lost one through accident, and they would have given me my salary, of course. I paid this money out of my own pocket. In that case, the superior officer would make a detailed report of the matter. But when I got back to Washington, the State Department was not in a position to take care of it. Now, I am asking $10,000, and that represents 11 years interest; that is, if you want to give me interest. I am not asking for interest especially, but I would like to have the principal.

Mr. Christgau. I would not live in Russia for two years for $50,000. I was there for two or three weeks once.

Mr. McMillan. Mr. Alford has gone into this matter with some detail, in order that you may visualize the experiences that he went through with during his sojourn in Russia. I think it is admitted that the conditions in Russia prior to and during the war were most unusual. As has been stated by Mr. Alford here, those are the conditions that he was confronted with there, and certainly they were most unusual. He spent two years in that country, during this revolution, during which time he was faced with difficulties that men are not usually called upon to face. He spent all of the money that he could rake and scrape over there, including his salary and allowance. In addition to that, his health had been permanently impaired as a result of those experiences.

On the question here as to the amount he is asking for, of $4,000, I will say that I took the entire file that Mr. Alford had here, and which was given to me, and turned it over to the legislative drafting counsel of the House. They went over the file, and made the statement that $4,000 would be, in their view of the case, a rather accurate statement of the amount of money that Mr. Alford would be entitled to receive.

On the question of interest here, that is one I have never agreed with Mr. Alford about, because it is not the policy of Congress really to allow interest for any amount of money paid out on that sort of score.

On that score I have never been able to agree with Mr. Alford that Congress would recognize that particular phase of his claim. That accounts, to some extent, for the difference between the amount I put in the bill I introduced, and the amount of the claim which he thinks he is entitled to receive.

Gentlemen, I believe that, in brief, covers the case. At the very best it is the sort of claim that it is most difficult to undertake to arrive at, in getting any accurate figure, because of the conditions that have been explained.

But it can be said that Mr. Alford was over there nearly three years and had these harrowing experiences. He was three times sentenced to be shot, and by the merest accident he is here.

He has gone through these experiences and to that extent he was doing his bit for this country and this Government as much as though he was in a front line trench.

The Congress has been liberal in its appreciation of the services of the regular men in the armed service of the Government. Mr. Alford and others like him, who even though they offered their services in the military forces of the country were not accepted, were nevertheless doing their bit, and they have not been recognized or given any compensation for the losses that they have sustained.

In view of that sort of a situation this claim is presented to you gentlemen, and I hope sincerely you will find it possible to be in a position so that you can give favorable consideration to this claim.

(Thereupon the subcommittee adjourned.)

TO AUTHORIZE THE SECRETARY OF THE TREASURY TO PREPARE AND MANUFACTURE A MEDAL IN COMMEMORATION OF THE ONE HUNDRED AND TWENTY-FIFTH ANNIVERSARY OF THE EXPEDITION OF CAPT. MERIWETHER LEWIS AND CAPT. WILLIAM CLARK

HEARINGS

BEFORE

THE COMMITTEE ON COINAGE, WEIGHTS, AND MEASURES HOUSE OF REPRESENTATIVES

SEVENTY-FIRST CONGRESS

SECOND SESSION

ON

H. R. 11853

(REPORT 1378)

MAY 5, 1930

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON: 1930

COMMITTEE ON COINAGE, WEIGHTS, AND MEASURES

RANDOLPH PERKINS, New Jersey, *Chairman*

ALBERT H. VESTAL, Indiana.
LLOYD THURSTON, Iowa.
FLORIAN LAMPERT, Wisconsin.
GEORGE J. SCHNEIDER, Wisconsin.
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PAUL JOHN KVALE, Minnesota.
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BOLIVAR E. KEMP, Louisiana.
ROBERT A. GREEN, Florida.
VINCENT L. PALMISANO, Maryland.
WRIGHT PATMAN, Texas.
PEARL PEDEN OLDFIELD, Arkansas.

HARRIETT BUFFETT, *Clerk*

TO AUTHORIZE THE SECRETARY OF THE TREASURY TO PREPARE AND MANUFACTURE A MEDAL IN COMMEMORATION OF THE ONE HUNDRED AND TWENTY-FIFTH ANNIVERSARY OF THE EXPEDITION OF CAPT. MERIWETHER LEWIS AND CAPT. WILLIAM CLARK

MONDAY, MAY 5, 1930

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COINAGE, WEIGHTS, AND MEASURES,
Washington, D. C.

The committee met, pursuant to call of the chairman, at 10.40 o'clock a. m., Hon. Randolph Perkins (chairman), presiding.

This is a hearing on H. R. 11853, a bill by Mr. French to authorize the Secretary of the Treasury to prepare and manufacture a medal in commemoration of the one hundred and twenty-fifth anniversary of the expedition of Capt. Meriwether Lewis and Capt. William Clark.

(The bill referred to is as follows:)

[H. R. 11853, Seventy-first Congress, second session]

A BILL To authorize the Secretary of the Treasury to prepare and manufacture a medal in commemoration of the one hundred and twenty-fifth anniversary of the expedition of Captain Meriwether Lewis and Captain William Clark

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in commemoration of the one hundred and twenty-fifth anniversary of the expedition of Captain Meriwether Lewis and Captain William Clark and in commemoration of the valuable services rendered this Nation by these two explorers, the Secretary of the Treasury is authorized to prepare and manufacture at the United States mint at Philadelphia a medal from an appropriate design with devices, emblems, and inscriptions significant of this historic achievement. The medals herein authorized shall be manufactured, subject to the provisions of section 52 of the coinage act of 1873, from suitable models to be supplied by the Lewis and Clark Memorial Association (Incorporated), of Lewiston, Idaho. The medals so prepared shall be delivered at the Philadelphia Mint to a designated agent of said Lewis and Clark Memorial Association (Incorporated), upon payment of the cost thereof.

The CHAIRMAN. We will now hear from Mr. French.

STATEMENT OF HON. BURTON L. FRENCH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IDAHO

Mr. FRENCH. Mr. Chairman, Mrs. Oldfield, and gentlemen of the committee, you will recall that some weeks ago I appeared before the committee in support of a bill that I had introduced, providing for a memorial coin to commemorate the services rendered by Capts. Meriwether Lewis and William Clark, in the remarkable exploration trip they made to the Pacific Northwest, 125 years ago.

The bill that I urged upon the committee at that time, embodying the memorial coin idea, was H. R. 4192. Several bills had been considered by the committee up to that time. Two, as I recall it, had been reported and had been passed by the House of Representatives.

Your committee was good enough to report favorably upon my bill. Subsequently to the report upon my bill, one of the two bills that had passed for a somewhat similar purpose—the bill providing for a memorial coin to commemorate the Gadsden Purchase—passed the Congress and, upon review by the President, was vetoed. The House of Representatives sustained the veto.

It is perfectly clear to me that the Congress will accept the policy of the administration that it is unwise at this time, in view of the facts set forth by the President in his message, and will decline, to pass memorial coin bills.

However, it was indicated to me, by the chairman of the committee and also by the Treasury Department, that a memorial medal would not be objected to by the Treasury Department, and so I have reintroduced the bill, casting it in the line of the suggestions made, and providing for a memorial medal to commemorate the services of these two distinguished explorers.

The bill speaks for itself. I submit to the committee the data that I presented in support of the memorial coin bill and would be glad if the bill that I now introduce should meet with your approval.

Mr. PALMER. The Treasury Department reports favorably upon this bill?

The CHAIRMAN. I have a letter from the Secretary of the Treasury which I shall read and submit for our record.

TREASURY DEPARTMENT,
Washington, April 30, 1930.

DEAR MR. CHAIRMAN: I have your letter of April 23, 1930, concerning H. R. 11853, a bill to authorize the Secretary of the Treasury to prepare and manufacture a medal in commemoration of the 125th anniversary of the expedition of Capt. Meriwether Lewis and Capt. William Clark.

I take pleasure in stating that this department will interpose no objection to the enactment of this legislation. The facilities of the mint service will be placed at the disposal of the Lewis and Clark Memorial Association in the manufacture of the medals.

I submit for the consideration of your committee the suggestion that the bill be amended to the extent of indicating the maximum number of medals to be made and the metal out of which they are to be manufactured.

Very truly yours,

A. W. MELLON,
Secretary of the Treasury.

Hon. RANDOLPH PERKINS,
Chairman Committee on Coinage, Weights, and Measures,
House of Representatives.

How many medals will you want, and of what kind of metal?

Mr. FRENCH. I should suggest that you say not to exceed 100,000 and to be of silver alloy, containing no greater amount of silver than is contained in silver coins.

Mr. PALMISANO. May not that bring about some objection?

The CHAIRMAN. They suggest a change in the shape, so as to distinguish it from coins.

Which would you prefer—silver or bronze?

Mr. FRENCH. I should think silver.

Mr. PALMER. I move that the bill, with amendments, be reported favorably.

The CHAIRMAN. Mr. Palmer makes a motion that the bill be reported with amendments.

Mr. PALMER. That is correct.

The CHAIRMAN. Then I suggest that Mr. French prepare the amendments and Mr. Cable prepare the report.

Mr. CABLE. If I am fortunate, I will have another report to prepare, Mr. Chairman.

The CHAIRMAN. Well, we will let Mr. Palmer prepare the report.

(Whereupon the committee proceeded to the consideration of other business.)

7

AUTHORIZING THE PRESENTATION OF MEDALS TO THE OFFICERS AND MEN OF THE BYRD ANTARCTIC EXPEDITION

HEARINGS

BEFORE

THE COMMITTEE ON COINAGE, WEIGHTS, AND MEASURES HOUSE OF REPRESENTATIVES

SEVENTY-FIRST CONGRESS

SECOND SESSION

ON

H. J. Res. 327

(REPORT 1402)

MAY 5, 1930

UNITED STATES
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WASHINGTON: 1930

110265

COMMITTEE ON COINAGE, WEIGHTS, AND MEASURES

HOUSE OF REPRESENTATIVES

SEVENTY-FIRST CONGRESS

RANDOLPH PERKINS, New Jersey, *Chairman*

ALBERT H. VESTAL, Indiana.
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HARRIETT BUFFETT, *Clerk*

AUTHORIZING THE PRESENTATION OF MEDALS TO THE OFFICERS AND MEN OF THE BYRD ANTARCTIC EXPEDITION

MONDAY, MAY 5, 1930

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COINAGE, WEIGHTS, AND MEASURES
Washington, D. C.

The committee met at 10.45 o'clock, a. m., Hon. Randolph Perkins (chairman) presiding.

The CHAIRMAN. We will now take up H. J. Res. 327, providing for the presentation of medals to the officers and men of the Byrd Antarctic Expedition.

(The resolution referred to is as follows:)

[H. J. Res. 327, seventy-first Congress, second session]

JOINT RESOLUTION Authorizing the presentation of medals to the officers and men of the Byrd antarctic expedition

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, empowered and directed to cause to be made at the United States mint such number of gold, silver, and bronze medals as he may deem appropriate and necessary respectively to be presented to the officers and men of the Byrd antarctic expedition to express the high admiration in which the Congress and the American people hold their heroic and undaunted services in connection with the scientific investigations and extraordinary aerial explorations of the Antarctic Continent, under the personal direction of Rear Admiral Richard E. Byrd, said medals to be suitably inscribed.

SEC. 2. That such amount as may be necessary for the purchase of the necessary materials for said medals is hereby authorized to be appropriated out of any money in the Treasury not otherwise appropriated.

The CHAIRMAN. We will now hear from Mr. Cable.

STATEMENT OF HON. JOHN L. CABLE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. CABLE. Mr. Chairman and members of the committee, some time ago I had an idea of introducing a coin bill for the benefit of the Byrd expedition. I read in the papers that their financial condition was somewhat involved and I took the matter up with Mr. Ochs, who is editor of the New York Times, and Captain Railey, who is the business manager of the expedition.

They communicated with Admiral Byrd and he radioed back his thanks for my interest, but did not think it was necessary.

While Commander Byrd has been given the rank of rear admiral, no kind of commendation, so far as Congress is concerned, has been given to his men. He had quite a few men who went down there with him. They were high-class men, well educated and skilled in their various lines of work and I feel that the men themselves are

entitled to some record of recognition for the invaluable work they have performed down there.

I also understand that it is expected that Byrd and his men—or most of them—will reach Washington about the middle of June and there will be some kind of reception given by Members of Congress and by the President, to Admiral Byrd and his men. That information was contained in the New York Times, and I feel that we ought to recognize the men as well as Rear Admiral Byrd.

This action is not a precedent. In about 1856, I think it was, some noted English explorer was lost in the Arctic and Doctor Kane, an American, organized an expedition and spent two or three years going into the northern regions in search of this Englishman.

He was not able to locate the man, but he and his men did make valuable discoveries, and the records disclose that Congress wanted to reward Kane and his men, and so they authorized the publication of some book and Members of the Senate and House were expected to buy that book for $5 and the public for more The bill also carried a provision for medals. I guess Members of Congress did not want to pay $5 for the book so a resolution was passed somewhat similar to this one granting Doctor Kane and his men medals to be given by the Secretary of the Navy, in recognition and in honor of their work. I feel that Congress should do something for the men with Rear Admiral Byrd, and I therefore introduced this resolution.

The CHAIRMAN. Just what does your resolution provide?

Mr. CABLE. It provides:

That the Secretary of the Treasury be, and he is hereby, empowered and directed to cause to be made at the United States mint such number of gold, silver, and bronze medals as he may deem appropriate and necessary respectively to be presented to the officers and men of the Byrd Antarctic Expedition to express the high admiration in which Congress and the American people hold their heroic and undaunted services in connection with the scientific investigations and extraordinary aerial explorations of the Antarctic Continent, under the personal direction of Rear Admiral Richard E. Byrd, said medals to be suitably inscribed.

The CHAIRMAN. Is that similar to the resolution in the Kane case?

Mr. CABLE. It is a little more extended, but along the same line excepting in the Kane case the Secretary of the Navy presented the medals and in this case it is made the Secretary of the Treasury.

Mr. PALMER. If you have in your possession the names of the men, do you not think it would be much better to state them in the resolution?

Mr. CABLE. I was going to do that, and I took it up with Captain Railey, and he sent me a list of names, but he also said:

I am communicating with Admiral Byrd and when I hear from him I will let you know.

I feel if we do not start on this soon, we will not have the resolution through and the medals made when they reach Washington. I have a list of the names of the men which may not be complete, and Captain Railey is not certain. It can not be done at the present time, because Captain Raily has communicated with Admiral Byrd, and I do not know just when his reply will be received.

Here is another thing: We do not know until the Secretary takes it up with Byrd, whether the man should have a silver, gold, or bronze medal. It depends upon the work and skill and ingenuity and intelligence displayed. So, if we put the names in there, we would also have to say whether he should receive a gold, silver, or bronze medal, and I do not believe that is possible at this time.

Mr. PALMER. How do you reason that there should be any more ground for giving different kinds of medals if you have 10 men instead of 1?

Mr. CABLE. The trouble is that there were some men who went to Little America and some who went over the South Pole and some who manned the ships, took the expedition to the Bay of Whales and then returned to Dunedin, New Zealand, until time to bring the expedition home again. There is quite a large number of men involved in the expedition.

Mr. PALMISANO. This resolution does not give them authority to designate particular medals?

Mr. CABLE. It gives the Secretary of the Treasury authority to take the matter up with Admiral Byrd and then present the medals after they know who ought to have the particular kind of medal.

The CHAIRMAN. It lies within the discretion of whom? Who has that discretion eventually?

Mr. CABLE. Admiral Byrd and the Secretary of the Treasury.

Mr. CHRISTGAU. I wonder if it is advisable to make a distinction here?

Mr. CABLE. If Byrd wants all to get gold medals, the Secretary of the Treasury can give them all gold medals.

Mr. PALMISANO. If these men went along and took so to speak, their lives in their hands, let us not ask Byrd what to do. For instance, you and I go along—all of us go along—and shall we ask him [indicating the chairman] whether we shall have recognition?

Mr. CABLE. Byrd is commander of the expedition.

Mr. PALMISANO. I understand that, but suppose you were the main pilot and he [indicating a member of the committee] was the principal engineer, the mechanic, and I went along: Now we all go together. What would you say, Mr. Chairman?

The CHAIRMAN. I am not sufficiently familiar. It seems to me it will be a matter of some difficulty to distinguish. At the same time, in the last analysis, there might be some reason for making a distinction. I think the men who actually went to the pole have performed more service than the men who stayed with the ship.

Mr. PALMER. Yes; I think you are right.

The CHAIRMAN. Is this what is ordinarly known as the congressional medal?

Mr. CABLE. No, sir.

The CHAIRMAN. This committee passed two resolutions, within my time—passed two out—one giving a medal to Lindbergh and another to Thomas A. Edison, who are, of course, very great outstanding personages of our time. The medals you are presenting are not the congressional medals, but medals of recognition?

Mr. CABLE. Yes; for the extraordinary work they have done.

Mr. PALMER. How many went to the pole?

Mr. CABLE. You mean to Little America or went from Little America over the pole?

Mr. PALMER. Went from Little America to the pole.

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Mr. PALMER. Went from Little America to the pole.

Mr. CABLE. There were four.

Mr. PALMER. All I want to see is justice to all.

Mrs. OLDFIELD. Do you not think there were others in the party who would have liked to go to the pole? Do you not think it was not their fault that they did not go?

Mr. CABLE. That is the reason I left it with the Secretary of the Treasury and Admiral Byrd to say who should get the gold, silver, and bronze medals.

The CHAIRMAN. In other words, this provides for recognition of the merits of the men and this is to be determined by the Secretary of the Treasury and Admiral Byrd. Why should this be the Secretary of the Treasury?

Mr. CABLE. I would rather strike out "Treasury" and insert "Navy." Byrd was in the Navy.

The CHAIRMAN. This is a matter that does not lie really in the hands of the Treasury. It is more a naval matter.

Mr. CABLE. The photogravure section of the Sunday Star of May 4, published in Washington, D. C., contains a great many pictures of the Byrd Antarctic Expedition. It refers to many men—Captain McKinley, Arthur D. Walden, Balchen, and Gould, second in command. Here [exhibiting] is Larry Gould.

Mr. PALMER. I do not care just so they all get their just place in the pages of history.

Mr. CABLE. I think they will. Mr. Page drew this resolution for me. He has a record of all medals by Congress. He inserted "Secretary of the Navy" and I went to the Parliamentarian and he said, "Make it Secretary of the Treasury." I found in the Kane case it was Secretary of the Navy and I think this should be Secretary of the Navy.

The CHAIRMAN. The question is whether this should be Secretary of the Treasury or the Secretary of the Navy.

Mr. CABLE. I would prefer Secretary of the Navy. Mr. Page drew the resolution for me.

The CHAIRMAN. I see Mr. Page is here.

STATEMENT OF HON. WILLIAM TYLER PAGE, CLERK OF THE HOUSE OF REPRESENTATIVES

The CHAIRMAN. Mr. Page, we are having a hearing on Mr. Cable's resolution to authorize giving medals to Byrd's crew.

Mr. PAGE. Mr. Chairman, I understood that Mr. Cable invited me over here for the purpose of imparting some information which I obtained chiefly from the Library of Congress.

I have kept a file of this material for some time because I found that many interested persons would request information from time to time and, in order to have it, I have retained it in my office. Much of it, I will say, I have not digested, because it consists of the various laws on the subject of medals of honor.

I find that medals have been awarded principally to officers and men in the military and naval services of the United States and also that Congress has gone out of that realm sometimes and granted medals for distinguished and conspicuous services of various kinds to other than Army and Navy officers. I have a list here of certain actions, giving the statutory references and the names of the persons and the purpose

or object for which the medals were authorized, and if you so desire, I shall have that incorporated into your hearings.

The CHAIRMAN. We will be glad to have that.

(The material referred to by Mr. Page is printed in full as follows:)

Gold medals granted by special act or resolution of Congress to persons other than Army and Navy officers

Date of act or resolution	Citation	Recipient	Reason for granting
Mar. 3, 1857	11 Statutes 255	Doctor Kane, his officers and men.	
May 11, 1858	11 Statutes 369	Frederick A. Rose	Assistance rendered yellow fever ship.
Jan. 28, 1864	13 Statutes 401	Cornelius Vanderbilt	Gift of steamship to United States during Civil War.
Mar. 2, 1867	14 Statutes 574	Cyrus W. Field	Laying of Atlantic cable.
Mar. 16, 1867	15 Statutes 20	George Peabody	Gift for education in southern and southeastern States.
Mar. 1, 1871	16 Statutes 704	George F. Robinson	Heroic conduct, saving life of Hon. W. H. Seward.
Feb. 24, 1873	17 Statutes 636	Jared S. Crandall and others.[1]	Life-saving, wreck of Metis.
Feb. 5, 1883	22 Statutes 636	John F. Slater	Gift for education of negroes in southern States.
Feb. 27, 1899	30 Statutes 1389	Michael F. Barry	Life-saving, rescuing people from drowning.
June 28, 1902	32 Statutes 492	David H. Jarvis and others	Overland expedition for relief of whaling fleet in Arctic regions.
Mar. 4, 1909	35 Statutes 1627	Orville and Wilbur Wright	Services to science of aerial navigation.
July 6, 1912	37 Statutes 639	Arthur Henry Rostron	Titanic relief.
Mar. 19, 1914	38 Statutes 769	Officers and crew of Kroonland.	Relief of Volturno.
Mar. 4, 1915	38 Statutes 1228	A. B. C. mediators in Mexican controversy.	

[1] Suitable and appropriate medals (metal not specified).

Mr. PAGE. Since this has been compiled, I think it might be augmented by a few more. I will ascertain the fact and if there are any more, I will have them incorporated into the statement.

The CHAIRMAN. We shall be very glad, Mr. Page, if you will prepare a statement quite generally covering this subject. It is rather new before the committee at the present time.

Mr. CABLE. I requested copies of the papers Mr. Page has from the Library of Congress and they said they had only one copy left and I would have to go over there and look at them. That is the reason I thought Mr. Page, from his knowledge, would be able to give us some information of value in regard to medals.

Mr. PAGE. In regard to the pending resolution, I would say in the main it follows the action by Congress in granting medals to persons other than Army and Navy officers. For instance, the officers and crew of the steamship *Kroonland* were voted medals—that is, the crew were voted medals—for saving lives at sea and the officers, I think, were voted gold watches.

Recognition by Congress for distinguished and meritorious services both in the Army and Navy, runs from the granting of a sword and the giving of the thanks of Congress, on through to rosettes and certificates of recognition. I dare say that the number of such kinds of bestowals must aggregate as many as 20 different kinds.

Of course high Army officers and high Navy officers have had bestowed upon them, according to the circumstances, not only the thanks of Congress, which carries with it the privilege of the floors of the House and Senate when they are named, but also in the case of

Admiral Dewey, a sword, and as in the case I pointed out, of some others, gold watches and gold medals and silver medals and bronze medals and on down to the rosettes and certificates of meritorious conduct.

Mr. PALMISANO. In reference to the officers and the crew that saved these people, in the resolution, were the names mentioned or were they just blank?

Mr. PAGE. The names of the officers were mentioned in some instances and then they were identified by their positions; for instance, if a man was second mate or first mate, it would so state.

Mr. PALMISANO. In the resolution?

Mr. PAGE. In the joint resolution, and then a man in the crew would not be mentioned.

Mr. PALMER. Just the principal officers?

Mr. PAGE. Not all of them—the entire crew.

Mr. PALMER. In this instance, when they went to the pole, do you not think all who went there should be named in the resolution?

Mr. PAGE. No, sir; I do not think that is necessary. I think that ought to be left to the discretion of Admiral Byrd and the head of the department—the Navy Department or the Treasury Department.

Under the law, the Treasury Department issues a life-saving medal. It does not make any difference whether the person who saves the life is in the military service of the United States or not.

Mr. PALMER. Pardon me, but it seems to me that every man, in order to get his part in the pages of history, that went along, should be mentioned. All I want to see is that each man gets his reward.

Mr. PAGE. Of course Congress can do that, but it will be made a matter of record in the department, in the bestowal of the medal.

Mr. PALMER. I understand.

Mr. PAGE. In the case of a civilian, of coure, it will not be a matter of record in the department other than the record made at the time of the presentation. It seems to me that the proper department to bestow these medals, is the Navy Department, seeing that Admiral Byrd is a naval officer.

The CHAIRMAN. And this was a naval expedition.

Mr. PAGE. And at the time, he had the grade of rear admiral.

The CHAIRMAN. This was a naval exploit on the sea, rather than into the realm of finance.

Mr. PAGE. I think the Treasury Department was mentioned because of the fact that the bureau of the mint is called upon to make these medals and also because the law authorizes the Secretary of the Treasury to bestow medals for life-saving. I can imagine no other reason for authorizing the Secretary of the Treasury to carry out the purposes of this joint resolution. I think more properly it belongs to the Navy Department.

The CHAIRMAN. Mr. Page, is it your intention to supplement your statement here by some sort of record of these bestowals, for the permanent record?

Mr. PAGE. Yes; I will put this list in and if it needs to be amplified, I shall do that.

The CHAIRMAN. We thank you very much.

Mr. CHRISTGAU. The question has come up whether the medals should be uniform, or whether those who perform more efficient

service should be given a different medal. Have you any ideas along that line?

Mr. PAGE. I do not think of any, Mr. Christgau, but I think it should be discretionary with Admiral Byrd and the Secretary of the Navy, because Admiral Byrd is in a better position than anybody else to make the differentiation and I take it that is the reason this provides for gold, silver, and bronze medals.

The CHAIRMAN. If you will supplement your statement in the manner indicated, we will appreciate it very much.

Mr. PALMER. I move that we report the resolution favorably, subject to the amendment suggested.

Mr. CABLE. Striking out "Treasury" and inserting "Navy."

The CHAIRMAN. The motion is to strike out "Treasury" and insert in lieu thereof "Navy" and, as amended, that the resolution be reported favorably.

(The motion was agreed to.)

The CHAIRMAN. We will ask Mr. Cable to prepare the report on the resolution. That is all for the day.

(Whereupon, the committee adjourned.)

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Small Loans in the District of Columbia

HEARINGS

BEFORE THE

SUBCOMMITTEE ON JUDICIARY OF THE COMMITTEE ON THE DISTRICT OF COLUMBIA HOUSE OF REPRESENTATIVES

SEVENTY-FIRST CONGRESS

SECOND SESSION

ON

H. R. 7628

A BILL TO LICENSE AND REGULATE THE BUSINESS OF MAKING LOANS IN SUMS OF $300 OR LESS, SECURED OR UNSECURED, PRESCRIBING THE RATE OF INTEREST AND CHARGE THEREFOR AND PENALTIES FOR THE VIOLATION THEREOF, AND REGULATING ASSIGNMENTS OF WAGES AND SALARIES WHEN GIVEN AS SECURITY FOR ANY SUCH LOANS, AND FOR OTHER PURPOSES

APRIL 15 AND 17, MAY 2, 3, 6, 19, AND 20, 1930

116023

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON: 1930

SMALL LOANS IN THE DISTRICT OF COLUMBIA

TUESDAY, APRIL 15, 1930

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE COMMITTEE ON DISTRICT OF COLUMBIA,
Washington, D. C.

The subcommittee met at 10.30 o'clock a. m. Hon. Clarence J. McLeod (chairman) presiding.

Mr. MCLEOD. The committee will now take up for consideration H. R. 7628, a bill to license and regulate the business of making loans in sums of $300 or loss, secured or unsecured, prescribing the rate of interest and charge therefor and penalties for the violation thereof, and regulating assignments of wages and salaries when given as security for any such loans, and for other purposes.

[H. R. 7628, Seventy-first Congress, second session]

A BILL To license and regulate the business of making loans in sums of $300 or less, secured or unsecured, prescribing the rate of interest and charge therefor and penalties for the violation thereof, and regulating assignments of wages and salaries when given as security for any such loans, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no person, firm, voluntary association, joint-stock company, incorporated society, or corporation shall engage in the business of making loans of money, credit, goods, or things in action in the amount or to the value of $300 or less, and charge, contract for, or receive a greater rate of interest therefor than is permitted by law to be charged by others than licensees under this act, except as authorized by this act and without first obtaining a license from the Commissioners of the District of Columbia, or from such person as the Commissioners of the District of Columbia may designate as the proper officer to issue such license, hereinafter called the licensing official. No license shall be granted to any person not a bona fide resident of the District of Columbia, nor to any firm or voluntary association none of whose members is a bona fide resident of the District of Columbia, nor to any joint-stock company, incorporated society, or corporation unless and until such person, firm, voluntary association, joint-stock company, incorporated society, or corporation, respectively, shall, in writing and in due form, to be first approved by and filed with the licensing official, appoint an agent, resident in the District of Columbia, upon whom all judicial and other process or legal notice directed to such person, firm, voluntary association, joint-stock company, incorporated society, or corporation may be served. And in the case of death, removal from the District, or any legal disability, or disqualification of any such agent, service of such process or notice may be made upon the assessor of the District of Columbia.

SEC. 2. Application for such license shall be in writing and shall contain the full name and address, both of the residence and place of business, of the applicant; and if the applicant is not an individual, of every member of the firm or voluntary association, or of every officer of a joint-stock company, incorporated society, or corporation, together with street number, if any, where the business licensed hereunder is to be conducted. Every such applicant at the time of making such application shall pay to the licensing official the sum of

$100 as an annual license fee, and no further charge shall be made against the licensee for examinations or administration of this act: *Provided*, That if the license is issued for a period of less than twelve months, the license fee shall be prorated according to the number of months that said license shall run.

SEC. 3. The applicant shall also at the same time file with the licensing official a bond in which the applicant shall be the obligor, in the sum of $1,000, with two or more sufficient sureties, whose liability as such sureties shall not exceed the sum of $1,000 in the aggregate, to be approved by the licensing official, and said bond shall run to the District of Columbia for the use of the District and of any person or persons who may have a cause of action against the obligor of said bond under the provisions of this act. The execution of any such bond by a fidelity or surety company authorized by the laws of the United States to transact business therein shall be equivalent to the execution thereof by two sureties, and such company, if excepted to, shall justify in the manner required by law of fidelity and surety companies. Such bond will be conditioned that said obligor will conform to and abide by each and every provision of this act and will pay to the District and to any such person or persons any and all money that may become due or owing to the District or to such person or persons from said obligor under and by virtue of the provisions of this act.

SEC. 4. Upon the filing of such application and the approval of said bond and the payment of said fee the licensing official shall issue a license to the applicant to make loans in accordance with the provisions of this act for a period which shall expire on the 31st day of October next following the date of its issuance. Such license shall not be assignable.

SEC. 5. If in the opinion of the licensing official the bond shall at any time appear to be insecure or exhausted or otherwise doubtful, an additional bond in the same form as the original bond in the sum of not more than $1,000 satisfactory to the licensing official shall be filed within ten days after notice to the licensee; and upon failure of the obligor to file such additional bond the license shall be revoked by the licensing official.

SEC. 6. The licensing official may, upon notice to the licensee and reasonable opportunity to be heard, revoke such license if the licensee has violated any provision of this act; and in case the licensee shall be convicted by a court a second time of violation of section 13 of this act the licensing official shall revoke such license, provided the second offense shall have occurred after a prior conviction; and thereafter no license shall be issued to such licensee, nor to the husband or wife of such licensee, nor to any firm, voluntary association, of which he is a member, or to any joint-stock company, incorporated society, or corporation of which he is an officer.

SEC. 7. The license shall be kept conspicuously posted in the place of business of the licensee.

SEC. 8. No licensee shall make any loan provided for by this act, under any other name or at any other place of business than that named in the license. Not more than one place of business shall be maintained under the same license, but the licensing official shall issue more than one license to the same licensee upon the payment of an additional license fee and the filing of an additional bond for each license.

SEC. 9. Whenever the licensee shall change his place of business he shall at once give written notice thereof to the licensing official, who shall attach to the license his approval in writing of the change.

SEC. 10. The licensing official, for the purpose of discovering violations of this act, may either personally or by any person designated by him, at any time and as often as he may desire, investigate the loans and business of every licensee and of every person, firm, voluntary association, joint-stock company, incorporated society, or corporation by whom or by which any such loan shall be made, whether such person, firm, voluntary association, joint-stock company, incorporated society, or corporation shall act or claim to act as principal, agent, or broker, or under or without the authority of this act; and for that purpose he shall have free and immediate access to the office or place of business, books, papers, records, safes, and vaults of all such persons, firms, voluntary associations, joint-stock companies, incorporated societies or corporations; he shall also have authority to examine under oath all persons whomsoever whose testimony he may require relative to such loans or business.

SEC. 11. The licensee shall keep such books and records in his place of business as in the opinion of the licensing official will enable the licensing official to determine whether the provisions of this act are being observed. Every such licensee shall preserve the records of final entry used in such business,

including cards used in the card system, if any, for a period of at least two years after the making of any loan recorded therein.

SEC. 12. No licensee or other person, firm, voluntary association, joint-stock company, incorporated society, or corporation shall print, publish, or distribute, or cause to be printed, published, or distributed in any manner whatsoever any written or printed statement with regard to the rates, terms, or conditions for lending of money, credit, goods, or things in action in amounts of $300 or less, which is false or calculated to deceive.

SEC. 13. Every person, firm, voluntary association, joint-stock company, incorporated society, or corporation licensed hereunder may loan any sum of money not exceeding in amount the sum of $300, and may charge, contract for, and receive thereon interest at a rate not to exceed 3½ per centum per month. Interest shall not be payable in advance or compounded and shall be computed on unpaid balances. In addition to the interest herein provided for, no further or other charge or amount whatsoever for any examination, service, brokerage, commission, or other thing or otherwise shall be directly or indirectly charged, contracted for, or received, except the lawful fees, if any, actually and necessarily paid out by the licensee to any public officer, for filing or recording or releasing in any public office any instrument securing the loan, which fees may be collected when the loan is made or at any time thereafter. If interest or charges in excess of those permitted by this act shall be charged, contracted for, or received, the contract of loan shall be void, and the licensee shall have no right to collect or receive any principal, interest, or charges whatsoever.

SEC. 14. Every licensee shall—

Deliver to the borrower at the time a loan is made a statement in the English language showing in clear and distinct terms the amount and date of the loan and of its maturity, the nature of the security, if any, for the loan, the name and address of the borrower and of the licensee, and the rate of interest charged. Upon such statement there shall be printed in English a copy of section 13 of this act;

Give to the borrower a plain and complete receipt for all payments made on account of any such loan at the time such payments are made;

Permit payment of the loan in whole or in part prior to its maturity with interest on such payment to the date thereof;

Upon repayment of the loan in full mark indelibly every paper signed by the borrower with the word "paid" or "canceled," and release any mortgage, restore any pledge, cancel and return any note, and cancel and return any assignment given by the borrower as security.

SEC. 15. No licensee shall take any confession of judgment or any power of attorney. Nor shall he take any note, promise to pay, or security that does not state the actual amount of the loan, the time for which it is made, and the rate of interest charged, nor any instrument in which blanks are left to be filled after execution.

No licensee shall directly or indirectly charge, contract for, or receive any interest or consideration greater than is permitted by law to be charged by others than licensees under this act upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan, use, or sale of credit, of the amount or value of more than $300. The foregoing prohibition shall also apply to any licensee who permits any person, as borrower, or as indorser, guarantor, or surety for any borrower, or otherwise, to owe directly or contingently or both to the licensee at any time the sum of more than $300 for principal.

SEC. 16. The payment of $300 or less in money, credit, goods, or things in action as a consideration for any sale, assignment, or order for the payment of wages, salary, commission, or other compensation for services, whether earned or to be earned, shall be deemed to be a loan secured by such assignment; and the amount by which such assigned compensation exceeds such payment shall be deemed interest upon such loan from the date of such payment to the date such compensation is payable. Such loan and such assignment shall be governed by and subject to the provisions of this act.

SEC. 17. No assignment of or order for the payment of any salary, wages, commission, or other compensation for services, earned or to be earned, given to secure any such loan shall be valid unless the amount of such loan is paid to the borrower simultaneously with this execution; nor shall any such assignment or order, or any chattel mortgage or other lien on property exempted from distraint, attachment, levy, and sale by the provisions of section 1105 of the Code of Law for the District of Columbia be valid unless it be in writing signed in person by the borrower; nor, if the borrower is married, unless it be signed

in person by both husband and wife: *Provided*, That written assent of a spouse shall not be required when husband and wife have been living separate and apart for a period of at least five months prior to such assignment, order, mortgage, or lien.

Subject to the provisions of section 20 of this act, under any such assignment or order for the payment of future salary, wages, commissions, or other compensation for services, given as security for a loan made under this act, a sum equal to 10 per centum of the borrower's salary, wages, commission, or other compensation for services shall be collectible from the employer of the borrower by the licensee at the time of each payment of salary, wages, commissions, or other compensation for services from the time that a copy of such assignment verified by the oath of the licensee or his agent, together with a similarly verified statement of the amount unpaid upon such a loan, is served upon the employer.

SEC. 18. No person, firm, voluntary association, joint-stock company, incorporated society, or corporation, except as authorized by this act, shall directly or indirectly charge, contract for, or receive any interest or consideration greater than is permitted to be charged by other than licensees under this act upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan, use, or sale of credit, of the amount or value of $300 or less.

The foregoing prohibition shall apply to any such person, firm, voluntary association, joint-stock company, incorporated society, or corporation who as security for any such loan, use, or forbearance of money, goods, or things in action, or for any such loan, use, or sale of credit, makes a pretended purchase of property from any person and permits the owner or pledgor to retain the possession thereof, or who by any device or pretense of charging for his services or otherwise seeks to obtain a greater compensation than is authorized by this act.

No loan for which a greater rate of interest or charge than is allowed by this act has been contracted for or received, wherever made, shall be enforced in the District of Columbia, and every person in anywise participating therein in the District of Columbia shall be subject to the provisions of this act.

SEC. 19. Any person, firm, voluntary association, joint-stock company, incorporated society, or corporation and the several officers and employees thereof who shall violate any of the provisions of sections 1, 8, 12, 13, or 18 of this act shall, upon conviction thereof, be punished by a fine of not more than $500 or by imprisonment of not more than six months, or by both such fine and imprisonment in the discretion of the court.

SEC. 20. This act shall not apply to national banks, licensed bankers, trust companies, savings banks, building and loan associations, or real-estate brokers, as defined in the act of Congress of July 1, 1902 (Thirty-second Statutes at Large, page 61), as amended by the act of April 26, 1922 (Forty-second Statutes at Large, page 500).

The provisions of sections 16 and 17 of this act shall apply to all loans made in conformity herewith, notwithstanding the provisions of sections 433, 1106, and 1107 of the Code of Law for the District of Columbia, which sections are hereby modified to the extent that they would otherwise conflict with the provisions of sections 16 and 17 of this act.

Nothing contained in this act shall be construed to authorize or validate the assignment of claims against the United States or of the salaries of public officers or employees of the United States Government or of the District of Columbia.

SEC. 21. The enforcement of this act shall be intrusted to the Commissioners of the District of Columbia, and they are hereby authorized and empowered to appoint such person as they deem proper to act as licensing official hereunder.

SEC. 22. The act approved February 4, 1913, to regulate the business of loaning money, (Thirty-seventh Statutes at Large, page 657), and all other acts or parts of acts inconsistent with the provisions of this act, are hereby repealed.

SEC. 23. This act shall take effect at the expiration of days after its passage.

Do you desire to be heard, Judge Gilbert, at this time?

Mr. LAMPERT. Mr. Chairman, this is a matter that is a good deal controversial. We just passed through a very exciting experience in Wisconsin in reference to the same bill. In order that the record

may be straight, I want the witnesses sworn before their testimony is taken.

Mr. MCLEOD. You make that in the form of a motion?

Mr. LAMPERT. I make that request.

Mr. MCLEOD. Is there any objection to the request of the gentleman from Wisconsin, Mr. Lampert?

Mr. BOWMAN. It is rather unusual, Mr. Chairman.

Mr. REID. It is very unusual, but then it is an unusual subject.

Mr. MCLEOD. Is there objection?

Mr. REID. There is no objection.

Mr. BOWMAN. I can not possibly see any objection to the matter.

Mr. MCLEOD. If there is no objection, it will be so ordered.

Mr. LAMPERT. I want to say I did not have reference to my good friend, the gentleman from Kentucky, when I made this motion; but I want everybody treated alike.

TESTIMONY OF RALPH GILBERT, FORMER MEMBER OF CONGRESS FROM THE STATE OF KENTUCKY

(The witness was duly sworn by the chairman.)

Mr. GILBERT. Mr. Chairman and gentlemen of the committee, the question of loans is a matter about which there is much interest and a matter to which I have given a great deal of study. You all recall that I was a member of the subcommittee to investigate the financial affairs and other affairs in the District of Columbia, and I was especially assigned to the financial end of it. I investigated some loan companies here, banks and other things, apartment house situations, and affairs of that kind, and came in connection with the loan situation. About that time the grand jury made an investigation and reported about the same that I had found, that the situation here was deplorable so far as loans were concerned; that is, loans to the poor. Before I ever knew there was a Russell Sage foundation, or any controversy between loan companies of any kind, I became convinced something should be done and introduced this bill. Now, as to how I came to introduce this bill, I then began to inquire of the character of legislation that was desired in situations of this kind. My attention was called to the fact that the Russell Sage Foundation had been, for years, making a study of the subject. I got in touch with their bill and studied it and every paragraph of it, and introduced the bill, as I have just said, before I ever knew there was any controversy.

Now, there has been in the States a great deal of controversy between certain financial institutions who want a larger rate, who have a higher capital and who want to come into the States, and the unorganized, as a rule, small loan companies who have not the capital and who do the same character of business. However, so far as I am concerned, I feel it is entirely a digression to consider what took place in Kentucky, or what took place in Wisconsin in the campaigns of incriminations and recriminations that have taken place between these gentlemen. So far as I am concerned, I do not care who is for the bill, who is against the bill; what States have it and what States have not got it. There is a situation in the District here which may or may not need legislation, and, if it does, is this

wise legislation. I have nothing to say about anybody. So far as my conscience dictates, I do not see why any one should feel that there should be anything against those who propose this bill.

Mr. REID. There is not any feeling of that kind before the committee, is there?

Mr. GILBERT. I have heard a good deal of it on the outside.

Mr. LAMPERT. Well, Judge, now you know there is not anything of that kind with me. You know if there is one man who served in the House here that I think the world of, it is you. I am one of those few Republicans who hope to see you back again here, too, and I do not want you for one minute to think my opposition in this matter is a personal opposition; I am opposed to this bill from the standpoint I believe it is wrong, and you are for it because you think it is right. Now, you have a right to your opinion and I have a right to mine.

Mr. GILBERT. I do not mean to intimate that the gentleman from Wisconsin intended any feeling of that kind. He and I served here side by side and the high regard he has expressed for me was entirely mutual. Some of the best work which was done here I saw him do, and I never at any time questioned his motives, even when we were bitter antagonists on the proposition before us.

Mr. REID. Now that the soft soap is by, what about the bill?

Mr. GILBERT. Well, to people who have not studied the subject like I have, there was some difficulty about the situation; but I feel it would be clarified upon an understanding of industrial loans. The very thought of 42 per cent frightens people away who have not studied the subject, and when I first heard of it I said "Why, entirely too high," and it would be for a large amount, over a long length of time. But these men and these borrowers have no banking prestige. There are only a small per cent, from 6 to 10 per cent, of the people who can go to a bank and get any money, even though it is perfectly secure. If it is a small amount, the banks do not want to fool with it. They have to open an account on their books and there are other people they could loan money to who would influence or bring in other depositors, and they do not want to fool with the poor man.

Credits are just like any other commodity; they have a price and you have to pay that price to get them, otherwise you do not get them. Some people have the idea that the poor man ought to borrow money on the same terms that the rich man does. Well, if we ever reach that stage, it would be delightful; but the result is they do not borrow it at all. Now, the idea of regulating companies and requiring them to take out a license and put up a big bond to loan money to the poor at 6 per cent is just foolish. If they were going to borrow, or could borrow, or needed to borrow a large amount of money for a long time, that would be a different thing.

Now, let us see what 3½ per cent a month amounts to. Supposing a man borrows an average amount, which would be somewhere around $100; he wants it for 30 or 60 days. Well, if he only wants it for 30 days and he gets back $96.50 net, why anybody can readily see that opening the books and taking a dangerous loan, that that is perfectly proper. Now you get down to the small amounts. Out in the State of Oregon, they charge 10 per cent a month and, if you talk about 10 per cent a month, it would seem outrageous;

but that is on little bits of loans—$30 and under. Now, here is the system out there: A poor man wants $30; he borrows it for 90 days; he pays it back in three monthly installments of $13.25 apiece. He has gotten his $30 and makes three payments of $13.25 apiece. That does not seem so bad; yet that is 10 per cent a month when you figure it out. What is the result? Where they do not have laws similar to this, why the officials can not examine the books, examine the character of the people that are conducting it, and they pay as high as 20 per cent a month. While the Kentucky Legislature was whittling its time away in politics, they ought to have been passing this bill, because immediately upon their adjournment the courts in Ohio indicted quite a number of them for loaning money at 20 per cent a month. In the District here they loan for enormous amounts.

Mr. REID. Indicted whom, Judge—the Kentucky Legislature?

Mr. GILBERT. No. The Kentucky Legislature could not borrow any money.

Mr. REID. That is what you said—after they adjourned they indicted them.

Mr. GILBERT. If I said that I was mistaken.

Mr. REID. Well, you have so many indictments down there; I did not think there was anything new about an indictment down there.

Mr. GILBERT. I just happened to pick this out of the paper:

> Five warrants charging violation of the small loans act were issued yesterday, two loan company officials being charged with collecting 240 per cent yearly interest on loans.

And here are the names, if it would be enlightening for any purpose; they are in the article.

Mr. REID. In what State was that?

Mr. GILBERT. They were Kentuckians operating over in Cincinnati, it seems. The average bank, which is supposed to charge 6 per cent, very seldom ever charges 6 per cent. Times get tight and money is worth more than 6 per cent. They all have an arrangement by which you will borrow some money and leave half of it on deposit, and the average man leaves a large part of it on deposit. The average bank loans the same money six and eight times, and it is not their money to begin with; yet they charge 6 per cent. You go into a bank and borrow some money. They do not hand you that money over the counter, as a rule; they just give you credit for that money and they keep the money, and, while you are paying 6 per cent, they loan it over again and it will go through the same way. Maybe if I take the money out, I will meet my friend Will here and pay him what I owe him, and he takes the money right straight back to the bank, and it has not been out of there over 10 minutes. Yet there are four or five of us paying 6 per cent on the same money.

Mr. REID. I wondered how you were getting the good publicity you have been getting here.

Mr. GILBERT. They are not only earning interest on the same money, but the money may be your money which you have taken there and deposited. So this question of credits is very interesting. I am hardly capable of going into it at any great length; I only want to make this introductory statement. We have with us one of the Russell Sage Foundation men. I have always thought it was more or less of an honor to be connected with the Rockefeller Foundation,

the Russell Sage Foundation, or any other of those other foundations that are spending millions of dollars; whether wisely or unwisely, they are spending it for the benefit of humanity in the best way they know how. One of those gentlemen is present and knows more about this situation than I will ever know, Mr. Leon Henderson, and I wish you would now permit him to take up and explain the bill fully.

Mr. REID. Did you ever make a report when you were on that special committee of the District of Columbia as to the conditions here that warrant any legislation of this character?

Mr. GILBERT. No. That report was just filed, as I gather from the papers, a week or two ago. We made a very voluminous report. That was the Gibson subcommittee.

Mr. REID. Did I sign it? I do not remember myself.

Mr. GILBERT. I do not remember, but this committee reported on this very bill.

Mr. REID. That is what I want to know. Is that in existence?

Mr. GILBERT. When I introduced this bill, I had a hearing and this committee reported this bill favorably, just as it is.

Mr. REID. The same bill, just as it is?

Mr. GILBERT. The same bill just as it is, word for word. The report is here and I did testify and I wrote the report and we would not do anything.

Mr. BOWMAN. I see a number of Members of Congress here; perhaps they are busy. I wonder if it would be opportune for them to be heard now and permit them to go, and then to hear Mr. Henderson later, if that would be satisfactory.

Mr. GILBERT. I see Congressman Chindblom here.

Mr. REID. He has plenty of time; he has been elected by a great majority and he has plenty of time now.

Mr. MCLEOD. Would you desire to be heard here at this time?

Mr. CHINDBLOM. Yes.

Mr. GILBERT. I had a lot of Members of Congress who are familiar with the work on this bill, who are great financiers. There is Mr. McFadden, the chairman of the Banking and Currency Committee of the House. He is for this bill, I understand, and was to have testified for it.

Mr. REID. You refer to him as being chairman of that committee. Does that make him a financier?

Mr. GILBERT. Well, it should. He should have been selected by reason of his peculiar fitness in these matters. And there are many other Members of Congress familiar with the old situation, but Mr. Chindblom is the only one I see present.

Mr. REID. Chindblom never had to borrow any money; he would not know.

Mr. GILBERT. Suppose you take Mr. Chindblom first and then hear Mr. Nolan.

TESTIMONY OF HON. CARL R. CHINDBLOM, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

(The witness was duly sworn by the chairman.)

Mr. CHINDBLOM. Mr. Chairman and gentlemen of the subcommittee, I am not here to discuss in any detail the provisions of the bill. I am interested in this legislation because I know the value of it in a large city. I might say that I think perhaps the legislation more especially relates to conditions in large communities, such as the city of Washington, D. C., and other places where there are large numbers of people who frequently have to make small loans. We have this law in Illinois and it has operated admirably. I am in favor of this legislation. I think, during the hearings, you may hear something from one of my distinguished constituents, who is here, Senator James J. Barbour, a member of the State senate. In fact, he is almost the dean of the senate in Illinois and he is very familiar with this legislation.

That is about all I wanted to say.

Mr. HULL. Mr. Chindblom, this bill carries an authorization of 42 per cent interest rate. Are you in favor of 42 per cent interest on small loans?

Mr. CHINDBLOM. You can not get the people to make loans without security upon the hazards and uncertainties of payment and all the risks that are connected with this kind of business, in my opinion, at a less rate of interest.

Mr. HULL. If several other cities or several States have provided a lower rate and certain companies are now operating in those States only charging 2½ per cent a month, instead of 3½, would you still be in favor of the higher rate?

Mr CHINDBLOM. As I understand the bill, it does not compel them to charge 3½ per cent; it permits it and prohibits any higher rate.

Mr. HULL. Would you be in favor of adopting the higher rate, when companies are operating under laws of some States compelling a lower rate, and they are continuing to do business at the lower rate?

Mr. CHINDBLOM. My experience in Chicago, I will say, is that a lower rate than that provided here will not provide the relief these borrowers must have.

Mr. HULL. Is it not a fact there is a corporation in your State which is loaning at 2½ per cent, and not only in your State but in some others?

Mr. CHINDBLOM. There might be and, as I understand, they loan principally upon the security of household goods. Where they can get security, where it is possible to get any kind of security upon personal property or upon securities and, of course, upon real estate, there is no use of discussing a rate of 2½ per cent, even, because that would not be necessary. Where you can get security, where you have something upon which you can fall back to compel payment, it is not necessary; but in cases where there is absolutely no security, where men have nothing but their weekly income and they reach the point, for instance on account of illness or on account of some catastrophe or disaster, where they must have money immediately, I do not think you can induce capital to loan money upon a much less rate than 3½ per cent, because they have to protect themselves against their losses.

Mr. HULL. Have you studied this bill?

Mr. CHINDBLOM. Well, of course, I have read it.

Mr. HULL. Do you realize this bill also provides they may take security and still have authority to charge 3½ per cent?

Mr. CHINDBLOM. Well, they may take security and, if they do take security, they will have competition with other people who make loans at a less rate.

Mr. HULL. Do you favor 3½ per cent?

Mr. CHINDBLOM. As a limitation.

Mr. HULL. Even though other States have fixed lower rates and they continue to operate at the lower rates?

Mr. CHINDBLOM. Well, I have stated my opinion; I am not going to enter into an argument with you.

Mr. HULL. I want to know your opinion.

Mr. CHINDBLOM. I have stated my opinion, that I think a 3½ per cent rate is about what is necessary in order to permit people in these extraordinary situations to get the relief they must have.

Mr. HULL. Have you fixed on that rate from any experience of your own in connection with this business or on propaganda of certain societies seeking to promote this kind of legislation?

Mr. CHINDBLOM. Well, sir, I practiced law in Chicago for 30 years, and I know the conditions that existed there before we had this law. I know how the people were gouged who had to get, occasionally, small loans; I know just exactly what happened. I represented some people who had been unconscionably gouged by loan sharks, and I am thoroughly convinced that a law of this kind is not only greatly beneficial but absolutely necessary in a large community where people of this kind must secure assistance in the way of small loans—temporary loans.

Mr. HULL. You feel there is only one way of stopping gouging, and that is to authorize these high rates of interest?

Mr. CHINDBLOM. Well, I do not know of any other way to provide a method by which people in this class can get money, except by permitting those who are willing to make the loans to make an earning which will make them practicable, make them whole, because they have great losses; a man disappears, he is gone; they have to charge up these losses against the earnings which they are able to obtain.

Mr. HULL. Do you know what those losses average in your State?

Mr. CHINDBLOM. Oh, no; I did not come here prepared for that. I think you will get those facts.

Mr. HULL. Would you believe the statement put out by a corporation of your State, selling stock for this kind of proposition, that the losses will run less than 1 per cent?

Mr. CHINDBLOM. I have not seen such a statement.

Mr. HULL. Would you believe it if you saw it?

Mr. CHINDBLOM. Well, I would like to know the source of the statement, or to know the author of the statement.

Mr. HULL. Would you place any credence in any corporation in your State which was propagandizing the sale of its stock by making the statement that the losses on these loans were less than 1 per cent?

Mr. CHINDBLOM. I am not going to underwrite the opinion of anyone whose connections, whose operations, I do not know anything about.

Mr. HULL. Have you known of such a corporation?

Mr. CHINDBLOM. I do not know anything about such a corporation. If they are using that argument for the sale of stock, that would be another reason why I would want to be more thoroughly convinced.

I thank the committee.

TESTIMONY OF HON. WILLIAM I. NOLAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

(The witness was duly sworn by the chairman.)

Mr. NOLAN. Mr. Chairman and members of the committee, I have been interested in this small-loan legislation, first, as a member of the Minnesota Legislature, where we have had this matter before us on several occasions, although the Legislature of Minnesota has failed to enact the law. On two occasions, as a member of the house in Minnesota, we passed the bill in the house and it was defeated in the senate, and the last session of the legislature, although a committee appointed by the house had made a study of this law and made its investigations in the various States where it was under operation and reported favorably upon the law and recommended its passage, no strenuous effort was made to do anything with it.

In our State we have some large cities where the conditions, I assume, are the same as you will find in any large cities in this respect; that is, the people who are unable to furnish security, who must have money for immediate needs, or for any other purpose, have only one source of borrowing, and that is through the so-called loan shark. We have in the city of Minneapolis, where I reside—probably if you will pick up any of our newspapers, you will see advertised anywhere from 20 to 25 of these so-called loan companies who offer to make loans, unsecured loans, and who charge, as a rule, anywhere from 10 per cent a month, and in some instances it has been disclosed they have charged as high as 200 per cent a year, for these small loans made to people who have no means of obtaining money in any other way. They are unregulated and, although from time to time an effort has been made to prevent this kind of business, it seems still to go on. A year or two ago one of the newspapers of our State took the matter up. There was a great deal of agitation; a number of lawyers in the city of Minneapolis offered their services to fight these cases of usury. It went on for a short time and then, as things of that kind do, it subsided and the loan shark is still in business, still exacting his high rate of interest and these unfortunate people have to pay.

I became interested in this legislation because several efforts had been made in our State to regulate or control this loan business. The Russell Sage Foundation has made a study and made its report and recommended this bill, which seems to me to be about the only kind of legislation that can be enacted that will make it possible for men who are willing to take the risks of this kind of business to operate, controlled and regulated by the State. And although the rate of interest, perhaps, seems very high; still, at the same time, for the class of loans that are made, the people who are getting that service, under the present facilities for getting loans of this kind, are paying three or four or five times as high interest and have no protection, so far as the regulation of the business itself is concerned. And I am satisfied, from what investigations I have made, from what knowledge I have of the operation of this law in other States, and from what I

understand to be the conditions here in Washington at the present time, that legislation of this kind is beneficial to the man who must make a small loan; that it regulates that business, although the rate of interest is high, and on the question asked by my friend, Mr. Hull, as to the rate of interest charged by some States, it is necessary, it seems to me, to establish a rate under which the business can be conducted and competition within the business itself, if it can be found, it can be safely conducted at a lower rate of interest, will in itself reduce the rate of interest.

I do not think I have anything further to say on the subject.

Mr. HULL. Are you familiar with the rates charged by different States?

Mr. NOLAN. Fairly so; yes.

Mr. HULL. Are you acquainted with the rates charged—do you know of the rate charged in New Jersey?

Mr. NOLAN. I understand that is 2½ per cent, is it, or 2 per cent? I could not tell you right off the handle the charge in any of these States, because I have not the figures here.

Mr. HULL. Would you recommend the passage of this bill authorizing them to charge 42 per cent in the District of Columbia, where conditions are more favorable than in most industrial centers? Do you know that New Jersey has reduced the rate from 36 per cent to 18 per cent, by law?

Mr. NOLAN. Well, that, I assume—I can not say right off I know they have done that; but, as I said before, you must fix a rate of interest under which the business can be operated. This has been determined as a rate of interest where the business can be operated and, in most cases, it requires this rate of interest. Where it is possible to reduce the rate of interest, experience in the business will demonstrate that fact and competition within the business itself will automatically bring down the rate, if the business can be conducted at a lower rate.

Mr. HULL. Do you know of any State outside of Illinois where they have reduced the rate by competition alone?

Mr. NOLAN. I know that is true in Illinois. I think the rate has been reduced there because of competition. I have not made a close study of the operation of the law in all these States, nor do I know anything about the business itself, as to whether it can or can not operate at a lower rate of interest. I am willing to accept this rate of interest as one determined by those who have made an investigation and who feel this is the only safe rate of interest under which to legalize this kind of business.

Mr. HULL. And if the State of West Virginia has reduced her rate to 24 per cent, even a State like West Virginia, would you still recommend this committee go ahead and report the bill out?

Mr. NOLAN. I would advocate it; because, as I said before, if the operation of the law demonstrates the business can be carried on successfully at a lower rate of interest, why the lower rate of interest will eventually come about.

TESTIMONY OF HON. CHARLES L. UNDERHILL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

(The witness was duly sworn by the chairman.)

Mr. UNDERHILL. Mr. Chairman, I appear here voluntarily this morning, due to my interest in this legislation. The older members

of the committee will remember that I took a very decided stand in behalf of this legislation previously in the committee, largely because of the experience I had in my own State, as I was a member of the legislature which passed this law in 1916—practically this same law. Conditions in Massachusetts had become intolerable, as they are in the District. The loan shark had a grip upon the throats of the people who needed temporary assistance of a financial character and he had no mercy in him. The legislature took it up and, although there was a great deal of opposition at the time, principally to the rate, the prophecies made by the opponents of the proposed legislation really have not come to pass. All of the evils which they anticipated that would come from the enactment of such legislation have proved to be mere vapors, and the benefits which have come from it have been great—to such a degree that it has driven the loan shark out of Massachusetts. And I know of no other State, possibly with the exception of New York, where they did such a tremendous business, at such an unconscionable profit, as they did in Massachusetts.

There has been no criticism of the law; there have been several attempts to increase the rate from 3 to 3½ per cent, which I believe is the uniform law, so called; but, up to the present time, so far as I am informed or know anything about it, that rate has not been increased beyond 3 per cent. When you say "3 per cent," it does not sound big; but when you say "36 per cent," it sounds tremendous. But when you realize these loans are only for a short period and also realize the fact that in many instances they are imperative and must be made at any cost, almost, you can see the necessity of this legislation for protecting those who are unfortunate enough to be obliged to seek financial help.

I can not add anything, probably, to what you have already heard. The Russell Sage Foundation has no financial interest, no ulterior motive. They have made an exhaustive study of the situation. Their recommendations have been accepted by many States throughout the United States. I have opposed for the past 10 years the establishment of a legalized loan business—that is, a pawn broker's business in the city of Washington. I hope the time will never come when the three gilt balls will be seen down on Pennsylvania Avenue, or elsewhere in the District. I do have, however, a sympathy for those who are temporarily without funds and are obliged, by illness or other reasons, to seek temporary relief, and I think this committee and Congress could do nothing of a more constructive character than to provide some medium through which they could obtain loans under proper supervision.

Mr. HULL. Mr. Underhill, do you consider the conditions in the District of Columbia such that the rate here should be 6 per cent higher than it is in Massachusetts?

Mr. UNDERHILL. Six per cent higher?

Mr. HULL. Yes—42 per cent instead of 36 per cent?

Mr. UNDERHILL. Well 3½ per cent is the ruling rate, practically, in all other States; but Massachusetts was the first State——

Mr. BOWMAN. Three and a half per cent is not the established rate; 3½ per cent is the maximum rate.

Mr. UNDERHILL. Well, the maximum rate. Usually the maximum is the rate accepted. Let us not try to camouflage the issue.

Mr. HULL. Mr. Underhill, I understand Massachusetts has a maximum rate of 36 per cent, or 3 per cent a month; is that true?

Mr. UNDERHILL. Unless it has been changed recently.

Mr. HULL. And is there any reason why the rate should be higher in the District of Columbia than it is in Massachusetts?

Mr. UNDERHILL. Only, perhaps, that conditions have changed since 1916 materially. I think they have; I think we are paying higher rates of interest everywhere.

Mr. HULL. But your legislature has not taken that condition into consideration by raising the rates in Massachusetts, has it?

Mr. UNDERHILL. It has not; unless, as I say, it has recently; but I think the half of 1 per cent per month makes little or no difference in the ultimate result to be obtained from this bill. Of course we have in operation in Massachusetts the Morris plan; we also have several other cooperative plans which have worked out splendidly and I wish the organizations here in the District would get together, the private organizations, and evolve some such plan for their employees as we have, in many of our great manufacturing, industrial, and mercantile establishments. This is a solution which would be helpful and I think possibly, if such a law as this were enacted, it would be an incentive, it might be an incentive for mercantile establishments here in Washington—we have not many of the industrial class with a large number of employees—such firms, we will say, as Woodward & Lothrop, Kanns, Parker-Bridget Co., and some of the others, which might very easily adopt something of a cooperative nature along the lines of the Morris plan. The Morris plan is used quite universally in New York and it certainly is a mighty good thing, and the losses from those plans are infinitesimal—are so small as to be negligible. But you need something to start this ball rolling and I think if you will give the authority in the District to do it, as I said before, it would be an invitation and an incentive for them to take up other methods. I thank you, sir.

TESTIMONY OF LEON HENDERSON, DIRECTOR, DEPARTMENT OF REMEDIAL LOANS, RUSSELL SAGE FOUNDATION

(The witness was duly sworn by the chairman.)

Mr. HENDERSON. My name is Leon Henderson; I represent the department of remedial loans of the Russell Sage Foundation. I am director of the department. If there are any questions on any item as to the Sage Foundation, I would welcome them at this time.

Mr. LAMPERT. By whom did you say you were employed?

Mr. HENDERSON. I am a full-time director of the department of remedial loans of the Russell Sage Foundation of New York City.

Mr. LAMPERT. What is the department of remedial loans? I wish you would explain for the benefit of the committee who they are, where they are located, who the officers of the concern are. I want a little information on that.

Mr. HENDERSON. It is not a concern. The Russell Sage Foundation is an endowed foundation created by Mrs. Russell Sage, chartered in the State of New York, for the improvement of social and living conditions. It has been at work for some 20 years in the field of social work. As you probably know, there are other foundations, some of which have confined their efforts toward the improvement of health conditions, some in education; but Mrs. Sage felt there was need in this country for a research foundation which would be getting at the causes of poverty and their elimination, and which would be providing reasonable answers to the social problems. Along that line, the Sage Foundation has conducted surveys as, for example, the Pittsburgh survey, the Springfield survey—whole town surveys as to all items affecting the common run of people. It has made studies of various methods of handling wage disputes; it has done considerable work in the improvement of the technique in administering charitable funds; it has done considerable work in organized recreation. It financed, for New York City, the most stupendous study that I believe has been made of regional planning. The Sage Foundation financed the early stages of regional planning, city plannings—the proper layout of cities. It has a multitude of activities. The department of remedial loans has been in existence almost during the entire life of the Russell Sage Foundation.

When we began to get at the causes of disputes in families, we found the enormous rates of interest which were being charged to poor people in their trying circumstances was to a large extent responsible for what you might call family case work. The reason why hundreds and hundreds of families got into a financial condition where they must appeal to charity for aid was because of the enormouse rates of interest being charged by usurers who fed upon them like leeches.

We began the study of the elimination of that particular item which affected so many people and still affects them. In the beginning we helped to enlist philanthrophic and semiphilanthropic capital in the making of these small loans, and there are throughout the country 35 semiphilanthropic institutions which make loans almost at cost. The rates which these remedial companies charge for chattle and wage-assignment loans varies from about 2 per cent to 2½ per cent. In other words, institutions organized not for profit but for good have found that the cost of making chattel loans and wage-assignment loans to workers necessitates a charge of from 2 to 2½ per cent per month. That assumes that capital comes in without cost in raising; that assumes that the well-directed management will be cost free; that assumes that it will have the cooperation of all the city's welfare institutions.

Another item to which we addressed our attention was the subject of cooperative credit, and we provided for New York what is known as the credits union law, and we have participated in the credits-union work for a number of years. In fact, we have, you might say, given a grant each year toward the encouragement of cooperative credit institutions which would make loans to members of some group on their own members' indorsement, very much the same as building and loan associations loan.

Mr. REID. You mean by that you supplied the money to them?

Mr. HENDERSON. No. We supplied the money for the organization of them, for the dissemination of information telling them what the law was, and helping. Just take this case recently of a laundry in

New York which had a number of employees: They came to us and said, "We want to organize under this credits union act." We spent an immense amount of time, my assistant, with them, drilling their board of directors, drilling the man who is going to be manager, drilling the committees who are going to pass on loans, helping them fill out the certificate, and when they get going helping them to supply good forms and good business. In Germany we are——

Mr. REID. Before you get into Germany, do you supply them with any money, directly or indirectly?

Mr. HENDERSON. No, sir; none at all.

Mr. REID. Are you the means of their getting any money?

Mr. HENDERSON. No, sir.

Mr. REID. In no way, shape, or manner?

Mr. HENDERSON. No, sir. They are cooperative, just like building and loan associations.

Mr. REID. I am talking about the Russell Sage Foundation, or any of its officers.

Mr. HENDERSON. No, sir; absolutely none.

Mr. REID. Are they in any way the vehicle which creates a fund which could be loaned?

Mr. HENDERSON. Absolutely none.

Mr. REID. All you do, then, is to supply the plan, time, and trouble?

Mr. HENDERSON. And the research, you might say. We prepared five bills which were passed this year in New York on this credits-union work: that is, we supplied the research and technique similar to the research investigation that is back of this bill here.

Mr. HULL. What rate of interest does the credits union charge, Mr. Henderson?

Mr. HENDERSON. The credits-union rate will vary from 1 per cent to 1½ per cent a month. The credits union is not limited in the amount of loan it can make; it can make rather large loans. The working and administering of loans is done free by officers, just like a building loan, and it is done on indorsed note paper; that is, the shares of two other members are pledged for the loan.

Mr. HULL. What losses have the credits unions had, as an average?

Mr. HENDERSON. There is no organized information on the credits unions. In New York State, it runs upwards, I would say, of a half to 1 per cent. The credits union is one of the biggest mechanisms for making loans that is available. The credits union is only available in close interorganizations where they will work together, mainly in groups of workers, you might say, like the post office.

Mr. HULL. Do they pay a fair rate of dividends?

Mr. HENDERSON. Yes; just like building and loan associations do. That is one of the finest things. As I say, I investigated that form of lending. I have pointed out to you two things we investigated some 14 or 15 years ago. We found that neither philanthropy nor cooperative credit in the form of credits unions could meet this tremendous problem, so we addressed ourselves to the task of regulation of commercial lending. When the Sage Foundation began its work there were no States in which the loan shark was not prevalent and was not almost in complete charge of small loans to workers. There were at that time no credits unions, no Morris plan, nor

personal-loan departments of banks, and only the pawnbroker loaning on material wealth that had already been accumulated.

Mr. HULL. Did your foundation at any time attempt, through its research, to frame laws to prevent any of those abuses—before you arrived at this particular bill, did you try to stop gouging?

Mr. HENDERSON. Yes, sir.

Mr. HULL. Did you go before legislatures and ask them to pass laws to stop the loan-shark evil?

Mr. HENDERSON. In New York, we interested the government in setting up an antiusury bureau in New York City, with a competent attorney in charge to prosecute loan sharks, and there was a vigorous prosecution carried on, and that experience, that has been repeated all over this country, of the vigorous prosecution of loan sharks, did not supply one dollar of capital to somebody who had to have money in an emergency. That is the gist of the whole thing. There are 85 per cent of the people in our country who come to the time when no prosecution of loan sharks will give them a single dollar to meet their bills; and they are going to meet those bills. The American family has in it something which keeps it going, and they will undertake to run their own affairs. If the money is not available from the bank, if they do not happen to have saved any and can not get it in any other way, they go to a loan shark, and there is no State in this country, bar none, if it does not have a regulation similar to this, in which the loan-shark conditions are not horrible, and in which 20 per cent per month is not being charged for small loans—none—no State in this country which does not have this regulation which is before you to-day but what has loan-shark conditions.

Mr. REID. Does that apply to Wisconsin?

Mr. HENDERSON. Wisconsin has this law. I might indicate in this connection, Mr. Reid, that before this law came into effect I personally participated with the district attorney in Milwaukee in prosecuting salary buyers who were charging 20 per cent a month to thousands of employees in that city. Those same employees are now getting loans at 3½ per cent—probably one-seventh of the interest and under much better conditions.

Mr. LAMPERT. Were you present during the late unpleasantness in the Wisconsin Legislature?

Mr. HENDERSON. During the late unpleasantness in the Wisconsin Legislature I was sojourning in California and having a very good time. I might say I did not take any part in politics there.

Mr. HULL. May I ask another question as to the activities of the foundation?

Mr. HENDERSON. Yes, sir.

Mr. HULL. On what other laws in relation to this or any other subject have you gone before the legislatures of the various States and take the same intensive activity that your foundation is taking in the propaganda in favor of this law? In any of your activities have you gone to the legislatures or to Congress and asked the enactment of bills carrying out the ideas of your foundation, or is this the only law which you have gone outside of your own State, New York, to advocate?

Mr. HENDERSON. I think we went to Colorado, for instance, and made a study of the Colorado Fuel & Iron method of handling wage

disputes, which I think resulted in some good. We went to Pittsburgh——

Mr. HULL. Did you or any other representative of your foundation go to Colorado, after you had made that investigation, and stay there before the legislature for weeks urging the enactment of that law to cure those conditions?

Mr. HENDERSON. I am sure they did.

Mr. HULL. Can you mention any other determined effort which you carried on——

Mr. HENDERSON. The child-welfare legislation.

Mr. HULL. Where the foundation has gone to the legislature and repeatedly, over any term of years, insisted upon the particular law which you insist upon here?

Mr. HENDERSON. I may say we do not insist. The Sage Foundation tenders its research, because it is a difficult thing; but we have done it in the child-welfare legislation and in welfare legislation of all kinds we have assisted in the passage of the legislation. There was at one time, assisting this board in the District of Columbia on child-welfare legislation, a director of the Russell Sage Foundation.

Mr. HULL. Can you mention any other activity, outside of the small-loan bill and child-welfare legislation, which you have been interested in going before the legislature?

Mr. HENDERSON. Recreation, public parks, playgrounds.

Mr. HULL. Before how many legislatures have you gone in behalf of those?

Mr. HENDERSON. I am not responsible for that department; I do not know. I will answer for anything in connection with my department. We have not insisted on our regulation, but this much is true, Congressman Hull, that there is a well-organized, vicious, criminal combine, one branch of which has its headquarters in Milwaukee at the present time and always has had, which is actively campaigning to prevent the passage of this legislation. This is the only part of the work in which the Sage Foundation has engaged in which there has been a large criminal group actively opposing proper regulation and, when there has been in any State an organized interest in borrowers which would ask our assistance to that extent, we have attempted to give it, and I hope we always will.

Mr. HULL. Your inference, then, is that anybody who opposes this bill is allied with some illegal organization that charges 40 per cent?

Mr. HENDERSON. No; absolutely not.

Mr. HULL. I wish to say I do not know of any such organization and I do not think Mr. Lampert does, and we are not here as representatives of any such Milwaukee organization——

Mr. HENDERSON. No; I do not mean to say anything of that kind.

Mr. HULL. And do not know anything about it. What I am trying to find out about this bill is—is it a scheme, or a plan?

Mr. HENDERSON. I can not tell you on that particular item. If there was any inference anybody on this committee, or any person here, was connected with that, I would certainly want to clear that up.

Mr. REID. He thought you might be unwittingly carrying out their ideas.

Mr. HENDERSON. I want to explain to you why the Sage Foundation has been more than active on this particular type of legislation. Loaning money at 20 per cent a month is a criminal act in many States.

Mr. HULL. In our State?

Mr. HENDERSON. In your State; yes. There are chain organizations of criminals making those loans, getting their grips on the poor people and, when it becomes necessary to vigorously defend your legislation against them—and these instances are many—the Sage Foundation does become vigorous, and I hope it always will. I have only been with the Sage Foundation five years, but I think there is plenty of social legislation in this country that will go actively along by reason of the technique which can be supplied locally; but, in this particular field I am here seeking to explain, there is need for all the more vigor and I am glad when I am able to supply it. I did not actively campaign or stay for weeks in Wisconsin; I never made a public appearance in Wisconsin on this bill.

Mr. REID. As I understand, Mr. Hull wanted to know if you have advocated before any legislature any other form of relief.

Mr. HULL. That is, than the present text of the bill—3½ per cent.

Mr. REID. Would you answer that?

Mr. HENDERSON. Yes; we drafted the New Jersey bill. The first bill was 3 per cent and we helped to draft the Massachusetts bill for 3 per cent.

Mr. REID. Those three, then.

Mr. HULL. I am trying to get at this one proposition on the part of your foundation; that is, your activity in the framing of laws to prevent these abuses in any other manner than providing for 3½ per cent interest rate.

Mr. HENDERSON. We provide remedial loan laws. These remedial loan societies——

Mr. HULL. Pardon me just a minute. Maybe I do not make myself clear, but it is not the rate of interest I am so interested in; it is the activity of your foundation in framing legislation for stopping the abuses of 20 per cent a month, stopping the violation of the criminal laws of the States by usurers.

Mr. HENDERSON. Oh, yes.

Mr. HULL. Have you gone out on any broad plan to stop that?

Mr. HENDERSON. Yes.

Mr. HULL. Except by offering a banking plan of 3½ per cent a month, or something of that kind?

Mr. HENDERSON. Oh, yes. We participated, for instance, in submitting some of the briefs, some of the legal knowledge in Kansas, which does not have this law, in two ways—to the attorney general, to get quo warranto proceedings against incorporated loan sharks and in helping to work up the case by which the supreme court declared loan sharks are nuisances and, as such, can be enjoined.

Mr. HULL. That was a matter before the courts and not the legislature.

Mr. HENDERSON. You wanted to know before the legislature?

Mr. HULL. I wanted to know, before the legislatures, what remedies you offered States through legislation?

Mr. HENDERSON. Credits unions, remedial loan societies, semiphilanthropic institutions, and this form. They are the three forms of legislation; one of them is semiphilanthropic, the other is mutual and cooperative, and the third is the regulation of the commercial lending. Now the commercial lending law takes its place regardless of whether you have a cooperative or semiphilanthropic, and our whole idea, plainly and simply expressed, is that it is so tinged with a public interest, the lending of money to 85 per cent of our people is so tinged with a public interest, that it ought to be brought within regular supervision and bonding. The borrower, in the circumstances that he meets the loan sharks, does not meet them on equal terms. This law undertakes to supply something of equality in the bargaining power; it undertakes to guarantee him certain rights which we believe are necessary, if he is to have a fair and equitable treatment in his lending.

Mr. HULL. You do not regard this as a philanthropic measure, do you?

Mr. HENDERSON. Absolutely not. This is the regulation of commercial lending. The only philanthropy in it is 20 years of work and I do not know how much money spent in research which would make this bill air-tight when there is any evasion pops up which might threaten the integrity of this particular law. We have spent more and more with our own people in studying more means of regulation and there is not any evasion right at the present time which can successfully withstand this law. We have done that; that is one philanthropy—this regulation of commercial lending and the lending in the United States, in some States is done, as I say, by a criminal group, a loan-shark group, charging a minimum of 15 per cent and often 40 per cent a month for the loans.

Mr. BOWMAN. Mr. Henderson, will you pardon me for a moment?

Mr. HENDERSON. Certainly.

Mr. BOWMAN. Mr. Chairman, it is almost 12 o'clock and there are a number of other witnesses to be heard. I move you, sir, that, when we adjourn, we adjourn to meet on Thursday at 10.30 o'clock for the continuation of this hearing.

Mr. REID. Why not to-morrow?

Mr. BOWMAN. To-morrow is the regular day.

Mr. LAMPERT. Mr. Chairman, I have not any objection to that, except I want to serve notice on the committee now that, when the proponents of this bill have been heard, I will respectfully request that time be given for us to gather the data and the witnesses that we want to gather on this matter. Now that will take some little time. I want at least two weeks after they get through with the hearings of the proponents. I am making that request now. I have no objections to going on with these hearings and keeping going on with them until the proponents of the bill finish.

Mr. BOWMAN. Of course, Mr. Chairman, I want to protest against any unreasonable delay of the hearings on this bill. The hearings already have been delayed out of respect and out of courtesy to the gentleman from Wisconsin, until the present time, and we have known for the last three or four weeks that hearings were to be resumed on this bill on this particular day and that they would be continued. Now, of course, I am going to protest vigorously against

any unreasonable delay in permitting the opponents of this bill to present their claim. They have had the same notice as the proponents of this bill.

Mr. LAMPERT. Mr. Chairman, I am surprised at the gentleman from Vest Virginia, very much surprised at him. It was a particular request of himself and the gentleman from Kentucky that this hearing was postponed for 10 days, was it not, Mr. Gilbert?

Mr. GILBERT. We had agreed on the 4th.

Mr. BOWMAN. We had agreed on another date.

Mr. LAMPERT. And you were tied up so you could not be here; you had to be in the legislature, and you asked me if it was all right, and I said it was perfectly all right. Now, in my case, I have to bring some witnesses from out of the city; I have to give them notice, and I am asking no more courtesy and do not want any more than any of the rest of you want, and that I would be willing to extend to any of you.

Mr. BOWMAN. Mr. Lampert, will you yield there for a moment? I have conferred with you on numerous occasions with reference to setting a definite time for the hearings on this bill.

Mr. LAMPERT. Yes.

Mr. BOWMAN. It was first agreed for shortly after the 1st of March, because you were going away, and I consented to that.

Mr. LAMPERT. The 1st of April.

Mr. BOWMAN. The 1st of March was the first one; then, later, it was the 1st of April. Now, we are up to the point where it is the 15th of April.

Mr. LAMPERT. Well, this last delay was caused just the way I am telling you; it was because the gentleman from Kentucky requested it.

Mr. GILBERT. The gentleman from Wisconsin had agreed to the 4th.

Mr. LAMPERT. Yes.

Mr. GILBERT. And at my request it was passed until to-day.

Mr. BOWMAN. But you have known of it from the 4th to the 15th.

Mr. LAMPERT. I just want a couple of weeks to gather these witnesses together after you quit. I do not ask any more than I am willing to extend.

Mr. REID. I move that all hearings on this bill close on the 30th day of April. That will give him his two weeks and one day over.

Mr. MCLEOD. You offer that as a substitute for the motion made by Mr. Bowman?

Mr. REID. Yes; as a preferential motion.

Mr. LAMPERT. Now, I am going to make a personal request of the gentleman from Illinois, which I know he will grant and know the rest of you will. The trout fishing season opens in Wisconsin on the 1st of May. For 40 years I have gone fishing there on the 1st of May and even this hearing won't keep me from going. Now, make it just a little later than that. I will be back on the 5th of May; make it the 5th of May.

Mr. REID. All right, the 5th of May, and bring the fish with you.

Mr. LAMPERT. I am not going to have this interfere with my fishing trip.

Mr. REID. No; it is not important enough.

Mr. LAMPERT. I thought not. It is 12 o'clock now; I move——

Mr. BOWMAN. Mr. Chairman, it will take us just another hour and a half to complete our hearings and why can not we move it up a

little, instead of moving it forward, and make it along about the 24th or 25th of April?

Mr. REID. Let us move to report it out.

Mr. BOWMAN. I am willing.

Mr. REID. Let us do that, then, and let it go to the full committee. That is the way to do it.

Mr. BOWMAN. Well, Mr. Chairman, I move you, then, that the bill be reported out favorably.

Mr. LAMPERT. It is 12 o'clock now, Mr. Chairman.

Mr. MCLEOD. The time is about 3 minutes to 12. The first order is on the motion to report it our favorably.

Mr. REID. Of course, my motion is the one that precedes the other.

Mr. LAMPERT. Now, Mr. Chairman, this committee is not going to be so unfair as not to give me an opportunity to be heard.

Mr. BOWMAN. I do not want to, Mr. Lampert.

Mr. LAMPERT. Then, what do you mean by making a motion to pass the bill out? If you want to make it, go ahead and make it.

Mr. BOWMAN. Mr. Chairman, I make the motion that the bill be reported out favorably.

Mr. MCLEOD. You offer that as a substitute for the motion of the gentleman from Illinois?

Mr. BOWMAN. Yes.

Mr. MCLEOD. You have heard the motion; those in favor will signify by saying aye.

(The motion was put.)

Mr. MCLEOD. The vote is 2 and 2.

Mr. LAMPERT. The motion is lost. It is 12 o'clock.

Mr. MCLEOD. The motion is lost, and the subcommittee will sit Thur day at 10.30 o'clock.

(The subcommittee thereupon adjourned until Thursday, April 17, 1930, at 10.30 o'clock a. m.)

SMALL LOANS IN THE DISTRICT OF COLUMBIA

THURSDAY, APRIL 17, 1930

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE
COMMITTEE ON THE DISTRICT OF COLUMBIA,
Washington, D. C.

The subcommittee met at 10.30 o'clock a. m., Hon. Clarence J. MCLEOD presiding.

Mr. MCLEOD. The committee will be in order.

Mr. LAMPERT. Before we go any further with this matter, I want to come to an understanding with my good friend from West Virginia on the time. It will be agreeable to me, Mr. Bowman, if you prefer to give me a day, to have it on the 28th. Will that meet your wishes? I have to leave on the 30th and prefer to have it before I leave.

Mr. BOWMAN. That was my idea, to suit your convenience. That will be perfectly satisfactory.

Mr. LAMPERT. There is another request I will make of the committee. Mr. LaGuardia called me up yesterday and said he wanted to be heard on this bill. He, like all other Congressmen, is busy. We heard several Congressman the other day, and if there is no objection I would like to hear him now for a few moments.

Mr. BOWMAN. I have no objection to it whatever. Was there any intention on your part to carry the swearing of witnesses to all who appear?

Mr. LAMPERT. I did not intend that to apply to Congressmen, but to other witnesses. I do not suppose Mr. LaGuardia will object to being sworn if the committee wants him to be. As far as I am concerned, I have not any request of that kind applied to him.

Mr. HALL. I move that we dispense with that part of the ruling and hear Congressmen without having them sworn.

Mr. LAMPERT. That is all right.

Mr. MCLEOD. Proceed.

STATEMENT OF HON. F. H. LaGUARDIA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. LAGUARDIA. Mr. Chairman, my appearance is more in the nature of an argument rather than testimony. If I give any testimony, you may put me under oath. I want to appear to register my opposition to H. R. 7628. My opposition is not directed toward the details of the bill or to the administrative features of the bill or the licensing part of the bill, but to the rate of interest which would be

legalized. I will concede the deplorable conditions existing in the city of Washington and other large cities in connection with the loaning of money in small amounts to people in need. I concede that. I concede the dangers of the loan shark and the necessity of doing something to wipe them out entirely; but, gentlemen, this bill is an homeopathic treatment with a vengeance. We may wipe out the loan shark, but we instantly legalize a rate of interest which makes a typical loan shark appear as a generous philanthropist. To think of 42 per cent interest in these days and this age is simply appalling. I am sure, gentlemen, if you ever reach the floor of the House with this bill there will be such a storm of opposition on both sides of the aisle that I do not believe there is any chance of passing this bill.

Now, we have repeatedly, Mr. Chairman and gentlemen, in connection with the farm bill for farm relief, in connection with the merchant marine act and other measures, discussed on the floor of the House the interest rate. The tendency of the time is to reduce interest rates and not increase them. The use of money, uncoupled with the personal service, is not as costly to-day to this country as it was some 25 or 30 years ago, and there is an entirely new attitude, a new school of thought developing in this country as to the value of money and the amount to be paid for the use of money. Now, the principle of the use of money is no different if a $10 bill is loaned or if a large amount is loaned, except, perhaps, that there is more pressing need for a $10 loan than there may be for an enormous amount to refinance the reorganization of some large concern.

Mr. BOWMAN. Granting that your statement is true, do you know where anyone could go for a loan of $10 or $50 or $100 in the event of an emergency?

Mr. LAGUARDIA. I am coming to that. I am glad the gentleman reminded me of it.

Mr. BOWMAN. And have you made an investigation as to the probable income or net returns of capital invested in companies of this nature where they take no security except the pay and the good will or the promise to pay of employes in various industries and various departments?

Mr. LAGUARDIA. Exactly. I am glad the gentleman reminded me of that. I will take it up right there. Much of this talk about making loans where there is no security has nothing to it. There is not one of these companies that would make a loan to a stranger, to a woman, if you please, in distress, out of work, unable to obtain any indorsements. You could not get a cent of it. Those loans are the very best kind of security. Why? First, they will loan to employees of large concerns and Government employees and municipality employees and State employees, and they have a very thorough investigation. They ascertain that the borrower is so employed. I am talking about cases where there is no collateral; and after they have ascertained that he is employed permanently—and, mark you, a man's job is the best security that he has, because that is his own livelihood—then they know that he is there employed at a place where if they make a complaint he will be immediately dismissed or where they can turn around and garnishee his salary. Right across the room we had a bill here the other day, at the last session, I believe, where they sought to pass a bill that would permit

of garnisheement of a Federal employee's salary. That involved so many complications.

Mr. BOWMAN. I will make an observation. I do not want you to impugn the motives of those of us who favor this bill. We believe that upon the investigation of the Russell Sage Foundation and their reports that this bill has been prepared with the idea of assisting and aiding those who really need an emergency loan. We are not here in the interest of loan sharks. We want to abolish the loan sharks as far as possible.

Mr. LAGUARDIA. Exactly.

Mr. BOWMAN. We know that they operate at a rate far in excess of 42 per cent annually, and if you would take the time to read the investigations of the Russell Sage Foundation, you will find out that you can only attract capital by a rate of interest anywhere from 2½ to 3½ per cent, because the ordinary man who expects a return on his money is not getting a fair return, and the reports show that those who invest capital in this line of banking make only a profit of 10 to 11 per cent and not in excess of that. We are trying to assist people under those conditions rather than not. Let us understand each other.

Mr. LAGUARDIA. I am not impugning your motives in introducing this bill. I am not questioning the motives of any Member of Congress who may support this bill, but I do say that the men, the company, the person who would be the beneficiary of this bill, getting 42 per cent interest on his money, is not a human being; he is just a slimy hog. Now, I resent injecting into the 42 per cent interest the eleemosynary feature and saying that the Russell Sage Foundation indorses it. I do not care what the Russell Sage Foundation says. I do not care what the Russell Sage Foundation does. The Russell Sage Foundation could not any more pass a bill like this in the State of New York, where they have their home office, than they could pass a bill distributing the wealth of the country per capita, and, gentlemen, this is 42 per cent interest; it is not human.

Now, to get back to where I left off. The very best security is obtained on these loans. These men are not fools. They are not philanthropists. They get the indorsements. They either are assured that they can garnishee the salary or that the man can lose his job, and I say that is the very best kind of collateral.

Mr. BOWMAN. Is there any bank in New York that would accept that collateral?

Mr. LAGUARDIA. Yes. I will mention them. Listen. I say right now in the presence of the Russell Sage Foundation that if they stand up here and support a 42 per cent interest in this kind of a bill their usefulness is ended; they are entirely discredited, and they ought to be ashamed of themselves as posing as an institution to look after the welfare of the people. Right here is Mr. Schlosberg, the secretary of the Amalgamated Clothing Workers' Union. I was a director of this bank during the interim between the time when I was at the city hall and I came to Congress. I resigned from that because it was a member of the Federal reserve, and I did not want to have a connection with any bank that was connected with the reserve while I was a Member of Congress. Yes; you can go right to the Amalgamated Bank, if you are one of the employees, with two indorsement, and you can get a loan there and they do not

charge 40 per cent, but they will charge you 6 per cent. You can go to any bank in New York with the indorsements of the kind that these men who are looking after this bill would want and get a loan there. Why? And the Morris plan? We are not even satisfied with the Morris plan system, where they discount the interest in advance, and they make the interest much higher than what it would seem and even that is far below this. In Washington what would happen? Wherever you have a law of this kind, immediately upon the passage of a law of this kind, you will have attractive advertisements: "Your credit is good. Come to the Bear Fur Co. and buy your furs." "Your credit is good. Why not wear diamonds?"

Then you go there and you buy what you want. Now, of course, they will say, your credit is good, but "we have our finance department." You go to the finance department and they negotiate a loan through that very concern with one of these companies, and the companies charge those people 3½ per cent a month. In that way your people are impoverished and if they default in one payment they not only have a double mortgage on the goods that were purchased, but in all likelihood they will have the indorsements, and in the city of Washington will immediately report it to the department, and, as you know, the rule in all the departments is when an employee is reported he will be dismissed in all likelihood.

Mr. BOWMAN. Your statement is in direct contradiction to the reports of the banking department of the District of Columbia and the commissioners of every State in the Union where this same law is in force.

Mr. LAGUARDIA. That does not alter the situation one bit. Forty-two per cent interest for money is outrageous and you can bring in all the banks in the world to say it is good. Of course, the bankers will say it is good. Attest, Mr. Chairman. Write a proviso into this bill that no person, no employee of the United States Government shall be dismissed for failure to pay any bill at this rate of interest and see how the sponsors of this bill will protest. That is a threat that they hold.

STATEMENT OF LEON HENDERSON, REPRESENTING THE RUSSELL SAGE FOUNDATION

Mr. HENDERSON. I will accept that. I drafted this bill. I will accept that.

Mr. LAGUARDIA. I would not boast about it if you drafted this bill.

Mr. HENDERSON. I will accept that amendment.

Mr. LAGUARDIA. Six per cent?

Mr. HENDERSON. Let you write it and we will accept it.

Mr. LAGUARDIA. I say 6 per cent.

Mr. HENDERSON. If you can prove to me that money will be loaned at 6 per cent I will accept it.

Mr. LAGUARDIA. The Russell Sage Foundation is not running the American Congress yet.

Mr. HENDERSON. You asked if the sponsors would accept it.

Mr. LAGUARDIA. You have power in some quarters, but thank God they are not running the American Congress yet, and if the sponsors of the bill will accept the 6 per cent interest discounted in advance

the same as the Morris plan, then there is no use of any argument, but 42 per cent is unconscionable and will demoralize every Government department in this city. You will have an epidemic of credit systems in stores, you will have a concentration of these loan organizations here. I will tell you right now that the banks in the big cities are meeting this situation, and they are adjusting themselves to making small loans. Now, some means must be provided, I suppose, of making loans. I say that if it is possible to loan money to shipping concerns at 3½ per cent, we must find the means of loaning money to small individuals whose very life may depend upon it, for a decent, honest, fair, reasonable, conscionable rate of interest. Now, gentlemen, perhaps I am speaking harshly on this thing, but this is not a financial question, this is a human question. You have got to be in contact with human beings, and I am in contact with poor people. My contact with them is not through a chart or statistics or figures, as some investigation foundation may be. I know human beings and I will tell you, you pass a law like this, bring a bill like this on the floor of the House and there will be such a filibuster started on the floor that it will tie up business. You will never get through an inhuman, unconscionable, thieving proposition of this kind, 42 per cent interest, and then pretend that it is a bill to wipe out the loan sharks, an eleemosynary measure to help the poor people. Do not pin it upon the poor, helpless people who have no one to come here and speak for them. I repeat I have contact with these poor people; I know the need that they are in, and as long as I am a Member of Congress I will do what I can to protect them and prevent anything like this camouflaged proposition, bringing in the Russell Sage Foundation to give it a color of respectability. It is outrageous.

Mr. LAMPERT. I do not know whether you are aware of the fact that this bill has been before the Wisconsin Legislature several times and that it was vetoed by Governor Blaine, now Senator Blaine, from Wisconsin, twice. Were you aware of that fact?

Mr. LAGUARDIA. Yes.

Mr. LAMPERT. I will read his first veto message if you will permit me to do it in your time.

Mr. LAGUARDIA. Yes.

Mr. LAMPERT. The reason I read this now is that it is exactly in line with the argument which is advanced why this bill should not be passed. The veto message is as follows:

To the Senate:

I return herewith, without my approval, bill No. 148 S.

I understand this bill has been promoted by some charity organization. If that is true, the organization has been misguided, for certainly this bill lacks every element of charity. I also understand that it is the purpose of the promoters of the bill to regulate what is known as loan sharks, but they have gone far astray in accomplishing any such purpose.

This bill provides, in short, for the licensing of any person, firm, or corporation which shall make any loan in the amount of $300 or less. It also provides for a certain supervision of such license. It is urged that there is no chance for small borrowers in this State to borrow money, and that this bill is intended to give small borrowers a chance.

The effect of this bill is to legalize the most unconscionable rate of interest. The maximum amount of interest that can now be charged is 10 per cent per annum; any rate of interest above that is usurious, and anyone who charges

a greater rate than 10 per cent per annum is subject to the penalties provided by law.

This bill proposes to permit a rate of interest at 3½ per cent per month, which means, on a basis of simple interest, 42 per cent per annum. If a borrower under this system borrows $100 and is unable to pay the $100 before the end of the year, he will be indebted to the amount of $142. If he pays the stipulated rate of interest per month, then the amount that the lender receives as interest will exceed $42 in one year—in fact, nearly one-half of the principal borrowed.

I understand that it is contended that the bill is intended to curb unlicensed banks and lenders who are preying upon the wage earners of the State. I can read out of this bill no such intent. This bill does nothing other than to legalize a rate of interest that the borrower can never pay. It is contended that it is unfair to argue that the bill legalizes the collection of 42 per cent per annum, and it is pointed out that the borrower will have the opportunity to pay the loan in weekly or monthly installments, and thereby reduce the principal, so that at the end of the year he will not have paid any such rate of interest.

The contention is unsound. If I am correct in my mathematics, a borrower under this bill of $120, payable in installments of $10 per month, at the end of six months will have paid $19.95 in interest, or an amount of interest equal to one-third of the principal he pays. This bill has none of the elements of charity, generosity, or protection to the small borrower. On the other hand, it legalizes usury—usury to the extent of four times and more the lawful rate of interest.

If our present laws are not sufficient to protect the small borrower, they should be amended to meet the situation, but I have not been able to come to the point where I can approve of any proposition legalizing and encouraging usury.

Respectfully submitted.

JOHN J. BLAINE, *Governor.*

JULY 6, 1921.

Mr. LAGUARDIA. Mr. Blaine is now Senator, is he not?

Mr. LAMPERT. Yes.

Mr. LAGUARDIA. Thank God for that. May I suggest that Kentucky, Mississippi, and Arkansas have acted along the same line.

STATEMENT OF HON. LEONIDAS C. DYER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

Mr. DYER. I will call attention, and I will be glad to have Mr. LaGuardia hear it if he will wait, to the fact that there is to-day a law pertaining to the loaning of money in the District of Columbia, of which I was the author, which was approved February 4, 1913. In that Congress I was a member of the Committee on the District of Columbia and we had quite a condition here. The rate proposed in that bill was 2 per cent, but the House, when it had it up for consideration, reduced it to 1 per cent per month. I realize myself that 1 per cent a month is not sufficient to warrant people carrying on this business. I simply wanted to call it to the attention of the committee. I did not know until just a moment ago that you had this subject up. I am very much interested in it, not only from the standpoint of the people of the District of Columbia and of many employees of the Government here, but I am interested in it from the standpoint of large cities, one of which in part I represent in the Congress. It is a question that ought to be given most careful consideration. There has grown up or had grown up in the District of Columbia at the time we had the subject up a condition that was very, very disgraceful. People were in business here and loaning money to Government employees and keeping them in their clutches,

at a rate as high as 5 and 10 per cent per month when we took up this legislation, and it is absolutely necessary in my opinion, to regulate the lending of money to small borrowers. Otherwise, there is no relief for them. They have got in the hands of these money sharks and it was impossible for them to get out. Thousands and thousands of Government employees in dire need of money at times borrowed small amounts and the interest was so exorbitant, unreasonable and unjust, that the best they could possibly do in many instances over long periods of time was to keep up the interest.

I do not wish to go into the subject at this time before the committee, but I am very anxious to have the privilege of discussing with the committee the law of to-day and to consider amendments if need be to that act. That act itself, in my judgment, is a good one, without endeavoring to praise it because I had something to do with its enactment, but because I believe it is a good law to govern. It has been copied in many States in practically every detail. The rate of interest has been usually fixed at 2 per cent, at which this committee fixed it when it presented the bill, but the House reduced it to 1 per cent. I agree with Mr. LaGuardia, and I think you gentlemen will agree with me, that you never will get a bill through Congress providing for as large a rate of interest as you have provided for in this bill, but that is a matter I do not wish to go into in detail now, but I will ask to have the opportunity, Mr. Chairman, to discuss this matter with you because of my intense interest in it of years ago and because of the conditions which we had to deal with at that time.

Mr. WHITEHEAD. What rate of interest would you suggest?

Mr. DYER. I do not myself wish to state definitely with the conditions existing now. But at that time there was practical unanimity of opinion that 2 per cent a month was ample for the lending of money, by small borrowers, as well as by pawnbrokers.

Mr. GILBERT. Will the gentleman state what the rate is in his State?

Mr. DYER. It is 2 per cent in our State.

Mr. HENDERSON. It is 2½ in Missouri.

Mr. DYER. The Legislature probably has increased it. The rate at that time was 2 per cent.

Mr. GILBERT. Can the gentleman give us it in New York. The gentleman just testified to 2 per cent. Can you give us what it is in New York?

Mr. DYER. As I say I do not wish to undertake at this time to fully discuss the legislation proposed here because I have not acquainted myself with the data up to date. But I wanted simply in a minute, not to take your time, to call your attention to the present law and to say that I believe if legislation is to be put through to amend this law, you ought to increase that rate. I never have believed that the two money-lending interests—that is, the people who loaned money on furniture, on salaries, or on notes—should be coupled up with those who loan money on articles such as carried on usually in pawn shops. I think there should be a very strict, and there was in the District, and is to-day, a statute very strict, governing lending of money by pawnbrokers, because it is necessary for the authorities to go to those places to try to trace property, such as jewelry and things

that have been thought to have been stolen, so I think there should be a separation of the two things. The rate should be fixed for those who lend money as indicated in the first instance, and for those who lend money in the second class, and they should be given a rate ample and sufficient to warrant them to do that business. You can not expect money lenders engaged in this business to be able to carry on business and lend money at the rate of 1 per cent per month as this law now provides. That is impossible. I say it should be at least 2 per cent. How much more depends upon conditions that now exist and of which we are not fully conversant, Mr. Chairman, and I have a very fixed idea and judgment on this plan of legislation, and I would like, before the committee closes consideration of it, to have an opportunity to be heard more fully. That is all I wish to state at this time. I thank you, Mr. Chairman.

Mr. GILBERT. Can Mr. Henderson, who wishes to make a train, complete his testimony?

STATEMENT OF LEON HENDERSON—Resumed

Mr. HENDERSON. Mr. Dyer, I will say about Missouri, I have had something to do with that. Under that old 2½ per cent act in Missouri, which was passed about 1913, somewhat at the time the District of Columbia bill was adopted, there was not one licensee under that law that did business that has been doing business in the last 10 years. The Better Business Bureau, the social agencies of Missouri, adopted this bill in 1927. I took part in the campaigns with the citizens' group in passing it. At that time there were in St. Louis 120 high-rate lenders doing business at 20 per cent a month, despite the fact that they could come under this 2½ per cent law, and there was not sufficient return for capital. Then the legislature in 1929 reduced that rate from 3½ per cent a month to 2½ per cent a month. I have just come back from a three or four days' visit to St. Louis to investigate what has happened there. The small lenders have gone out of business. Of the higher rates, there are no loans being made by the licensed loan companies. They have been forced in order to make a reasonable profit to accept loans only of $100 or above. Of the 120 high-rate licensed loan sharks that were there in 1927, they had been whittled down in 1925 to about five, and there was a movement all the time by the Better Business Bureau to put them out of business. Since 1929 with a reduction to 2½ per cent, they are increasing in number this year to about 13, or 8 new ones have come in since 1929.

Mr. DYER. As stated, my only purpose this morning was clarification of the situation that existed here some 17 years ago. Not many of you gentlemen, if any of you, were here in Congress at that time, but what we did do with the conditions we found at the time we thought was ample. I shall not undertake and do not wish to leave the impression that that rate is ample now.

Mr. HENDERSON. No companies have taken out license under that in these 17 years. I wanted to cover that point, because I think the rates are not satisfactory rates above $100, and the sentiment now is to increase the rate on loans under $100 to 3½ per cent a month.

I can not hope to equal the eloquence of Congressman LaGuardia. If I could, I might be a Congressman from New York myself. I do hope, however, that on matters which have to do with people and persons, that the Sage Foundation will have as much consideration as a leader of the people from one district in New York. The Sage Foundation for 20 years has had contact, practical contact, with thousands and thousands of poor people, people in distress who have to go to charity and welfare organizations, but I do not think it is reserved entirely for our politicians of New York to speak for poor people. If so, God save the people. There are a lot of things in which I agree with Congressman LaGuardia, as a matter of personality, but on matters on which the Sage Foundation has put 20 years of research on a difficult matter like this, I ask this committee to look into the face of the facts that we have found. The unpleasant thing about the whole matter is that this business is going on and as things work out to-day, the only choice practically before a committee which is as earnest as you folks are in doing something on the matter, is to pass a law which will regulate commercial money lending, or not pass it. If you pass a law on money lending, you have got your choice as to what the rate will be, but if it gets down to the nub of the kernel in any public discussion, although as a matter of fact, really, as a matter of fact, regulation, supervision, the combining of companies, the attraction of decent-minded people to substitute for criminals and arch criminals, is of more importance in working out a decent scheme of lending than anything else.

Regardless of all the fiery denunciations of 42 per cent, regardless of all flying in the face of the facts, the testimony of the banking commissioners, not the banks, as Mr. LaGuardia undertook to point out, but the banking commissioners, is that bringing the lending of small sums under regulation is the most important item, and then you have got this rate there, you have their figures and statistics, you do not go into the back alleys groping for ideas of what money is made by high-rate lenders, which run from 80 to 100 per cent per annum and frequently more. You have these rates there, and they can be regulated as any public-service rates can be regulated. You can tell what they are doing any time when you attract decent capital instead of the back-alley lender, who does an immense amount of harm which does not filter to the surface, but it does bring the lending out into the light, and that is the nature and tendency of the American public to-day, to bring all these agencies of groups of people who prey upon the public into the open and put the spotlight upon them.

As far as the Russell Sage Foundation, which I represent, is concerned, that is just what we favor. There is no organization that feels as strong about the high rates being charged the borrowers in this country than the Sage Foundation, and I do not kowtow to any Congressman, no matter how brilliant or oratorical he may be. I think we have devoted more time, more research, and more disinterested effort than any Congressman has had the opportunity or the facilities for doing. The fact remains to-day that there is upward of $1,000,000 being loaned by loan sharks in this country at the minimum rate of 180 per cent per year, and somebody who will wave his hands and arms in the air is undertaking to denounce 42 per cent in the face of these billions of dollars being loaned. Now, take these rates in New York.

Mr. BOWMAN. In your investigation have you been able to determine the length of loans made under legislation of this kind?

Mr. HENDERSON. The duration of the loan?

Mr. BOWMAN. Yes.

Mr. HENDERSON. In New Jersey studies by Dr. Wilfred I. King show that the average length of loan is about seven months. It shows that the average loan in New Jersey at the time of making was about $160, and it showed that the average cost for that loan in terms of interest was somewhere about $20. I submit to you that $20 will not bankrupt any family; but down in Judge Gilbert's State, where the $160 is loaned, the borrower pays $25 every month, not every year, and bankruptcy does ensue. Kentucky does not have a public law of this kind at the present time and hundreds have been sent into bankruptcy by such loan sharks. That condition does not exist in any State that has this law, because the figures show $5 a day for the average loan in New Jersey, and the borrower pays only three to four days of his time as interest; whereas in loan-shark territory he paid it per month. We have cases from Kentucky where we have gone down and gotten them, and the report shows where the borrower was working one-third to one-half of his time for the loan shark. You can contrast the conditions. Those are the facts. There is no question of whether there is usury or not.

Mr. BOWMAN. I realize that it may cost considerably more for an institution to make loans of $100 and less than for an institution to make the same number of loans of $500 or more.

Mr. HENDERSON. That is right.

Mr. BOWMAN. I am wondering if your company or association has ever figured out a graduated rate of interest. For instance, suppose that I should borrow $100 for two months with the understanding that I was to pay you $50 a month and the rate would be fixed at 3½ per cent. The first month I would pay $3.50. The second month I pay $1.75. But suppose I wanted to borrow $300 for three months; will it be practicable to reduce the rate of interest lower?

Mr. HENDERSON. You put your finger upon the fairest way of figuring interest that there is. There is a minimum charge which the lender must get from it in order to break even. On loans of $75 and less he must get 3½ per cent or he loses money. There is no question about that. That is not theory. That is fact. It is practicable, but I have always been afraid of a graduated rate—that there will be a possibility of the lender driving the borrower into those brackets which would be most profitable to him. If you can devise some scheme by which borrowers can pay whatever they ought to pay—that is, a higher rate to the smaller loan—it would be a very worth-while thing, but you have to have it enter into the cost of the loan, because a loan of $100, repaid in two months, even at 3½ per cent, would not pay the lender for making it. I would like to discuss the costs in terms of New York practice, with which I am very familiar.

Mr. BOWMAN. Go ahead.

Mr. HENDERSON. Three years ago the attorney general of the State, at the request of the labor unions and the Brotherhood of the New York Central Railroad, and others, made an investigation of the loan sharks in New York State, and he was amazed, as we were, although I have some knowledge of the conditions, as to what was revealed. The minimum rate was 20 per cent per month, despite the fact that we have all the agencies that you can devise by human ingenuity for the making of loans in New York. The attorney general estimated that we were paying $25,000,000 in New York City on loans of $300 and less at usurious interest. It got to such a magnitude that the attorney general requested the last legislature to create a commission to devise ways and means to overthrow the conditions. It was turned over to the crime commission because it was of such an importance—the Baume Crime Commission—and for a year they worked on it. The result of their deliberations was something like this: We have a law here which will regulate lending, supposedly, and allows about 2½ per cent per month; but we find that there are no companies doing business at that rate that were not doing business in 1915 when that rate was passed; and we find that there are fewer companies doing business and that there is less capital in this business than there was in 1915; and on investigation we find that the rate of 2½ per cent in New York is not enough to attract capital of any kind for the making of these small loans on wages and chattels, so we recommend 3 per cent. They had 3½ in mind, but at our request—we said this is the center of money and you can make it 3 per cent, but the Baume Commission wanted to make it 3½—we said make it 3; this is a money center. It passed one house of the legislature unanimously but got caught in the last-minute jam.

Up to date there has been no improvement in these conditions, and I am reliably informed that the State of New York will take steps to pass that bill at the coming legislature. They will take those steps regardless of how it is interpreted. The State of New York will not fly in the face of those facts. We passed the 2½ per cent bill. We thought that New York was the center of capital, the cheapest money in the world, that we ought to be able to get money in New York at those amounts; but, on the contrary, literally thousands and thousands of borrowers were driven to loan sharks. There were stories that you could not afford to disregard, and all they asked was a place to go to, to get money, to those who had capital to use; but anybody would lose money, except on a semiphilanthropic basis, at 2½ per cent interest on such loans, and no capital was coming into that business. In other words, if you could not meet the bank's terms, if you can not get credit on your own terms, if you can not go to the Morris plan and get a loan, then you have to go to these loan sharks; and that is true in the District of Columbia to-day.

We have banks in this city which are making loans to anybody who can get the proper indorsement. If it were not for the Morris plan in this District thousands would be driven to the loan sharks. They make all loans when they can get the two indorsements.

Mr. MCLEOD. What are the rates charged?

Mr. HENDERSON. The average is 1½ per cent a month but it makes loans only on comakers—that is, if you can get two indorsements—and they make a charge on loans in the limit of $300. They will not take wage or chattel loans. At that rate it is statistically impossible. The Morris Plan does a fine piece of business in New York.

One of the troubles about this is that this bill is too honest. We could have fixed up a scheme of discounts and investigating charges

and bonuses such as are charged on second mortgages in this city and it would have escaped notice, but we believe the borrower, particularly the poor borrower, has a right to know what he is paying. We believe that is one of the fundamentals.

Mr. GILBERT. How about fines and penalties?

Mr. HENDERSON. They have an adjustment on the amount per annum and the borrower is required by most companies to recompense themselves, for the delay in payment, to pay a fine.

Mr. GILBERT. They have to have two indorsers first and charge 1½ per cent a month.

Mr. HENDERSON. They have not all quite arrived at that, as for instance, our installment-finance companies that have three and a half billion dollars all the time being loaned on the installment plan. Has anybody ever figured out what it costs and what they charge people in those cases at the legal rate which can be charged, and yet the standard earnings of those installment-finance companies run from 20 to 22 per cent.

Mr. LAMPERT. You are familiar with the national chains of organizations that are in this business?

Mr. HENDERSON. Yes.

Mr. LAMPERT. They have a national association and they have their headquarters here at Washington. Who is in charge?

Mr. HENDERSON. The executive vice president is W. Frank Persons.

Mr. LAMPERT He is not here, is he?

Mr. HENDERSON. I do not see him.

Mr. LAMPERT. Just to answer the statement you just made, for fear I may forget it later on, is the only reason I interrupted you. I have before me here a financial statement of one of the large concerns that is in this business. I do not know just how many places they have, but they are represented in every State in the Union where this law now exists, and they have not fared very badly. Here is their own statement. This is the Household Finance Co., the company's own statement, issued from its public representative, Doremus & Co., which states that the Household Finance Co.'s net earnings for the first six months of this year, after paying taxes, amounted to $1,602,347. This is for the year 1928. These earnings were at the rate of 5.06 per share on the bonds, preferred and common stock now outstanding. Here is their statement. At the present time approximately 90 per cent of the installment notes receivable are on the 2½ per cent a month basis, 30 per cent a year. Your bill callls for 42 per cent, and this company on 2½ per cent a month charged last year made a profit over and above all expenses, and on which they have issued——

Mr. HENDERSON (interposing). There are no bonds out. It is $7,000,000, all preferred stock. I am glad you raised that point because I might have overlooked it. The Household Finance Corporation at the present time is loaning out at 2½ per cent and is making a reasonable rate of profit. They are loaning in Wisconsin at 2½ per cent, but they are not making any loans of less than $100.

Mr. LAMPERT. I wish you would furnish this committee—you just made me think of this—a list of all the national organizations that are scattered throughout the States, together with a statement of their financial condition, and also a statement of what the average loans amount to.

Mr. HENDERSON. I wish I had that.

Mr. LAMPERT. If you have not got it, I will furnish the committee with it.

Mr. HENDERSON. That would be a good thing. I wish you would furnish it to me. Under the present State laws there are only a few States which make these reports public any more. They make earnings public.

Mr. LAMPERT. How many States have this law now?

Mr. HENDERSON. Twenty-five States have this type of legislation. I would say that there are 22 States in which the operation is satisfactory. New York is not satisfactory.

Mr. LAMPERT. An attempt was made to pass this law in the last two years in seven States; and, if I am correct, each of those attempts failed.

Mr. HENDERSON. Is the failure of legislation an argument against it?

Mr. LAMPERT. No. I am just making the statement of the fact.

Mr. HENDERSON. The Massachusetts Legislature has passed this 100 to 10 in one house. It failed to pass in the senate.

Mr. LAMPERT. In the Wisconsin Legislature the senate voted to repeal this measure by 26 to 5, and the house refused to repeal it by 1 vote. There is the other side.

Mr. HENDERSON. To me that does not mean a thing. I want to know who is back of the repeals, and at whose instance those things were initiated.

Mr. LAMPERT. The people of Wisconsin are back of this repeal. The great institutions in this game are the ones responsible for its not being repealed. I have also got that, and I will testify to the committee later on.

Mr. HENDERSON. There are 25 States that have this type of legislation. In New York it is not successful because the rate has been 2¼ to 2½ per cent.

Mr. LAMPERT. I do not want you to get the idea that I do not think this organization you are in is not a great institution. You have done a great lot of work. I want to get that idea out of your head. I have not any such thought. You have done a great deal of good in this country. I want to clear your mind that I have any bias or prejudice against the Russell Sage Foundation.

Mr. HENDERSON. You and I presumably fight on the same side, and I have been a progressive in my time. I have not agreed with the Wisconsin brand. I have been a Pinchot progressive.

Mr. LAMPERT. The Wisconsin brand is the only real brand there is. They stood pat. That is why I am at the end of the table. They punished me and put me at the foot of this committee because I was a Wisconsin progressive.

Mr. HENDERSON. I have been a Pinchot progressive, and still am.

Mr. LAMPERT. That is worse.

Mr. HENDERSON. There are 21 States that have this legislation. I would say that there are 3 States that have attempted——

Mr. LAMPERT (interposing). The correct figure is 25 States.

Mr. HENDERSON. No; there are 25 States that have this type of regulation, I say. New York has all this regulation except the rate.

We drafted it and put that rate in with the hope that in time capital would find it possible to operate, but it has not done so in New York, and in West Virginia they reduced it from about 3½ to 2 per cent the last time and there is not one-tenth of the licensees who are still doing business, and they have been beset by the 20 per cent a month loan sharks. In other words, it has been demonstrated that 2 per cent will not work. New Jersey got into quite a political fight and the rate was reduced to 1½ per cent. Less than one-fourth of the licensees have renewed, and I have affidavits at the present time that people are paying $100 bonus to get a $300 loan. What does $100 bonus mean on a $300 loan? That is 33⅓ per cent right at the very start, regardless of the interest that is to be paid. In other words, they have attempted at different times in this country to put this rate all the way from 6 per cent to 60 per cent. Somewhere in there there is a decent rate, which it is our business to try to find out, and regardless of what reviling any gentlemen may do, you gentlemen have before you one question. What is the rate that will supply the capital? That is the one thing. Because people are going to have to have loans. Last year we had something like two and a half billion dollars loaned in this country in sums of $300 or less, and about a billion and a half of that was loaned at an average cost to the borrower of about 30 per cent, and that other billion dollars was loaned at a minimum of 180 per cent, and part of that was loaned in this District. Now, if there were some other scheme of lending other than cooperation, philanthropy with State aid or State help we would bring it to you. We would bring you this law which represents the various courts we have been through, the experiences of all countries with this type of legislation, which has been exhaustively examined, including the various practices and rates proposed in this country, and these rates at the present time are the best recommendation from supervision, regulation, and administration that we can devise. On the matter of rates you have your choice. If you feel that the rate of 3½ per cent is too much for loans of $300 or up to $300, you can fix that rate to suit yourself. I think that is a matter up to you. Our recommendation is that 3½ per cent has worked best.

Mr. BOWMAN. Your recommendation of 2½ per cent in New York has not been successful.

Mr. HENDERSON. No, and to our great regret.

Mr. BOWMAN. Rates of 2½ per cent and 3 per cent were a failure.

Mr. HENDERSON. Absolutely; and people are offering up to 20 per cent in West Virginia at the present time. It flows absolutely like any economic law and will flow, if there are no artificial stoppages to it. You can not escape it. You can fling your arms in the air and be oratorical and denounce 42 per cent, but 42 per cent represents the going rate. The Household Finance Corporation has done wonderful work in the class of loans referred to, but in this other class of loans they have to have 3½ per cent and to reduce it to 2⅓ per cent makes them riskier. Put that under your hat. You will have objections under this law. But there is no objection by loan sharks to reducing it to 2½.

Mr. MCLEOD. Your contention is that the smaller loan is riskier?

Mr. HENDERSON. The small loan is more costly. It costs so much to put a loan on the books and carry it. It will run the cost of putting the loan on the books and carrying it, run it to something like $2 a month for the life of the loan. The lender does not get enough income out of the loan under $100 to pay for making and carrying that loan, and as in any business, he does not derive profit from that, and it is only keeping the maximum of business of $300 loans that it pays. The National City Bank has been making loans of $300 and the Amalgamated has been referred to, and their loans will run considerably above $200 on an average. I am familiar with that.

Something was said about what rate; the National City Bank rate will run about 1 per cent a month. The Amalgamated rate will run 1.1 per cent per month. In other words, about 14 per cent for a year, and the National City will run 11 to 12 per cent, for a banking institution taking out comaker loans and making only these higher bracket loans. The National City Bank would tell you, and the Amalgamated would tell you, I think, that they can not get down to that bracket of loans. I think the Amalgamated Clothing Workers' Bank in New York is doing the finest piece of lending by banks that this country knows. I think that the National City Bank is setting an example which other banks may follow, but that does not alter the fact that here are loans that they can not make, and the more that they can not make the more they are driven to the loan sharks. Take the loan shark, and the National City Bank, the Amalgamated, the Morris Plan, he thrives side by side with them because they take the grade A risks, and the workingmen down in the wage levels of $1,400 to $1,800 are the people who have to have loans most and who go to the loan sharks. In the National City Bank the average income of the borrower will run about $200 a month.

Mr. BOWMAN. What State has the lowest rate of interest?

Mr. HENDERSON. New Jersey. That has only been in effect about a month, 1½ per cent, and the loans that are being made at the present time in New Jersey are comaker loans on the imitation of the Morris plan. They are made to people who can get good indorsers.

Mr. HULL. You stated something about conditions in your city.

Mr. HENDERSON. Early last year the Railroad Brotherhood and the Federation of Labor got in touch with us and asked us to draft a law which should be constitutionally good as in this case. We supplied it, and the Railroad Brotherhoods have gotten it passed in one house 100 to 10. The Federation of Labor assisted us. They know the group. They produced cases and wrote me of cases of hundreds of people paying 20 to 25 per cent a month, and among the colored population 40 per cent a month. We must have it so that this 3½ per cent will be under the law where you can regulate it, and if the money can be attracted people will be able to pay 3½ per cent, just like the Household Finance Corporation. You have to give them a fair rate to get them started. That was our thought in New York. We did not get started, but we were willing.

Mr. BOWMAN. What is the lowest rate of interest of any State operating under this plan successfully?

Mr. HENDERSON. Three per cent, in Massachusetts. I will tell you about Massachusetts, too. In the Massachusetts law there is a provision that the supervisor may fix the rate anywhere he pleases just

so it does not exceed 3 per cent. He has never reduced it, and they have the most effective regulation of loan companies of any State in the country. They have fewer loan sharks, and hundreds of thousands of dollars attracted, and they have a better administration of their law. Three per cent seems to be the flat rate and seems to be adequate for the loan companies, and they have had their law since 1911. That is one of the first laws we helped to draft.

Mr. REID. Have you been talking since Tuesday?

Mr. HENDERSON. You have had some others in here.

Mr. REID. I think you are trying to kill this bill by the length of time you are testifying.

Mr. LAMPERT. I want the gentleman who represents the Russell Sage Foundation to be present here when we take up the other side of this proposition.

Mr. HENDERSON. I will undertake to be here but I will not guarantee to be here.

Mr. BOWMAN. That will be on the 28th of April.

Mr. HENDERSON. I want to advise every one that we are not insisting on regulation. We offer this bill for your consideration. If you do not want it that is perfectly all right. I am not lobbying for this bill.

Mr. LAMPERT. I have some questions I wanted to ask you for information and that is why I wanted you to be here at that time.

STATEMENT OF FRANK J. COLEMAN, WASHINGTON, D. C.

Mr. GILBERT. State your business, Mr. Coleman.

Mr. COLEMAN. I am secretary of the Central Labor Union of Washington, and secretary also of the Maryland State and the District Federaltion of Labor, editor of the Plate Printer, and legislative representive of Plate Printers and Die Stampers and Engravers' Union of North America. Our people are in the Bureau of Engraving and Printing here in Washington and I am editor of their official magazine, being practically all of the men who make the paper money of the world.

Mr. REID. What do you do for a living?

Mr. COLEMAN. Nothing.

Mr. REID. What is your occupation?

Mr. COLEMAN. I am the editor of the Plate Printer.

Mr. REID. Are you a newspaper man?

Mr. COLEMAN. Yes. I was a plate printer in the Bureau of Printing and Engraving for 20 years.

Mr. REID. That is what I wanted to get at.

Mr. COLEMAN. I made plenty of money then.

Mr. REID. Did you keep any? That is the question.

Mr. COLEMAN. No. As secretary of the Central Labor Union of Washington and of our Maryland State and the District Federation of Labor, which takes jurisdiction in this city also, we are very much in favor of some method whereby our people can borrow money. We all know that at all times we must borrow money.

Mr. REID. We know it too well.

Mr. COLEMAN. During a time of stress, such as we have had in our unemployment here and elsewhere, people are forced to get money in sickness in all sorts of emergencies. We know that our people

have not large bank accounts. We have a very good bank in Washington—the Mount Vernon Savings Bank, the labor bank—that does all it can to help out in this situation, but we know the rank and file of the working people of Washington when they need money can not go to a bank and get it. They may be buying a house, but they can not get money on trust notes because they really do not have them. They are forced to go somewhere to get this money. We would be very much in favor of any kind of this proposition as expressed by Mr. LaGuardia to-day, a 6 per cent bank, where our people could go and get these small loans. We know that they can not do it. We know that banks will not allow these small loans. Consequently these people are forced to go to what might be termed these bootleg lenders and there are thousands of them in Washington. They are in our Government departments and practically every one of our Government departments has some sort of so-called club. These clubs exact from 5 per cent a month to 15 per cent a month. This is not a condition that we are trying to do something that would harm our people. Our interest is in our people just as much as Congressman LaGuardia, and I think I am in as close touch with the working people and the poor people as anybody in the United States. That is my job and they come to me and we try to relieve their situation everywhere we can and if it is possible to get them loans, if the emergency is extreme, we try to get them a loan from one of the banks. But they come to us and tell us that they have gone here and there and have borrowed so much money on an automobile. I know of a case the other day where a woman had to get a second-trust note and she went out in Maryland and got a second-trust note and I want to tell you she paid for it. It was only through some friends here of her family that we were able to rescue that woman's house through one of the banks here that kept them from foreclosing. So this question of 42 per cent does not scare us in the least. We know it seems exorbitant, but if any one will show us where money will come to Washington and establish a bank here or any other agency where people can go when they need it and get money, we will be for it.

Mr. BOWMAN. It is not a question of paying for it, but it is a question of knowing where you can get it.

Mr. COLEMAN. And where there will be some regulation that they can not be charged such exorbitant fees for examinations for doing this and doing that, and with all due respect to the Morris Plan Bank they get stung good and proper there and they get it good and proper when they go to any of these so-called legitimate loan agencies because they always find some excuse to put something on.

Mr. BOWMAN. You made some mention of various clubs and organizations in the departments of the Government. Can you give us any line on those clubs?

Mr. COLEMAN. No. I know that they exist. But I would not be able to go right where they are and tell you who and where, but I know they are there.

Mr. BOWMAN. Do you know of anyone that could give that information?

Mr. COLEMAN. No; I do not, because as a matter of fact they do it and it is against the law to do it. They all know it is against the

law to do it and a person would be cut off from borrowing, and the fact of the matter is that these people have to have this money and will not tell you where they get it, but we know where it happens.

Mr. LAMPERT. You know that my sympathies have always been with the fellow that had to work for a living.

Mr. COLEMAN. Absolutely.

Mr. LAMPERT. I have done it myself.

Mr. REID. Only his sympathies?

Mr. COLEMAN. No.

Mr. LAMPERT. This is the first time we are on opposite sides of the proposition.

Mr. COLEMAN. I am not going to feel bad about it.

Mr. LAMPERT. My opposition to the bill as written is based on the experience at the time a railroad organization, the Railway Brotherhood Union, bitterly opposed this bill and have been active in trying to get it repealed solely from the point of view that they consider the interest rate too high. I am for any proposition, as you well know, and the rest of you know, that will help the laboring man's condition, and while we seem to be on opposite sides of the question, I want to make that clear.

Mr. COLEMAN. We are not. I am not at all worried about where you stand.

Mr. HULL. You are interested in this from the standpoint of the working people.

Mr. COLEMAN. Yes.

Mr. HULL. And if Congress is going to pass legislation of this kind, that legislation should be broad enough to accord with the views of those who are affected in the various bureaus and departments as well.

Mr. COLEMAN. We are for any proposition that you may devise that will accomplish this purpose and if you can devise a better plan and a broader plan than this we would be for it.

Mr. HULL. If we are going to legislate we ought to take into consideration the fact that there are great abuses we should try to remedy.

Mr. COLEMAN. That is true.

Mr. HULL. Furthermore, in any legislation we pass here the welfare and interest of the laboring people are first to be considered.

Mr. COLEMAN. Yes.

Mr. HULL. If we are going to regulate we should get this regulation to a point where we can ascertain not only how much their losses are, but the salaries and what overhead charges are made against the small loan. Is that true?

Mr. COLEMAN. Yes. In about 1912 when the so-called loan shark bill was here, our people were being gouged something awful. They legislated here for us as we have not any way of doing it for ourselves or we would do differently, and they took the loan sharks away, and I think we were then entitled to a certain license fee to help pay our taxes. They moved across the line because they could not do business at one per cent in the District of Columbia, and I am reliably informed that they could not do business on two per cent, but they moved over across the District line and our people can go across the District line and they can get charged any rate that

they choose to charge them. That condition exists there. In this way, and you did the same way with a lot of things, you are taking taxes away from us, for instance, that we would have on our race-tracks, moving them to Maryland, and Maryland is getting all the benefit of it. So you have not done anything for the people of Washington on these matters. Here is a condition that we know. We believe in this bill that there should be certain regulations. We believe in the first place that only reliable firms should be allowed to do business because there could be some way of getting in people who were not reliable and you would have trouble trying to curb them. We believe the bill should be amended so that no one should be allowed to do business in this bill unless they were first licensed by the Commissioners after a very thorough examination, and only allowed to do business if they were acceptable to this board of commissioners.

Mr. MCLEOD. The rate of interest seems to be the moot question before the committee. Did I hear you say a little while ago that the 3½ per cent rate was not paramount in your argument, and that possibly 2½ per cent would be accepted as an amendment?

Mr. HENDERSON. No. I said you could probably work out graduated rates which would give you a guarantee on all except very small loans under $75.

Mr. MCLEOD. Your main object in this bill is to set up the way that loans will be made and the rate of interest is not paramount?

Mr. HENDERSON. That is it. It is not with us.

Mr. MCLEOD. Then the 2½ per cent suggestion is not acceptable to you people?

Mr. HENDERSON. You can not do it at 2½ per cent.

Mr. MCLEOD. You are doing it in New York.

Mr. HENDERSON. We tried it in New York. You might make a graduated rate from 3½ on loans up to $100, 3 per cent at $200, and 2½ on loans above that. That would be much better than what you have.

Mr. MCLEOD. You would not put much out in the District at 2½ per cent?

Mr. HENDERSON. I think you would not get many.

Mr. GILBERT. That is the amendment we would like to offer for a graduated one, up to $100, 3½ per cent, from $100 to $200, 3 per cent, and from $200 to $300 a rate of ½2 per cent. Not only that, but the bill will be safeguarded in this, that if this is under Government supervision, under a banking commissioner, after this is in operation for at least a year we will have access to the profits made there, and I know that this committee will be fair enough if we come back here and we will show you that this rate is too high and that these concerns can not do business, that you will be able to reduce the rate, and we are perfectly willing to take a chance with something like this, as we want it to protect our people against being gouged as they are at the present time. Should not this bill be broad enough to prevent the abuses and the gouging which are at present existing? Should not this bill be broad enough to remedy some of these abuses? What about your exemptions of families as to furniture and your exemptions as to wages, as to attachment, and so forth?

Mr. HENDERSON. That is all covered in the bill.

Mr. GILBERT. Only 10 per cent of the wages can be taken under this bill, and I will say to the gentleman that the testimony of Mr. LaGuardia and Mr. Dyer is something like this: Mr. Dyer said 2 per cent is too small. If that is the sole reason for objection to the bill, I would like to suggest that we try a graduated rate. These gentlemen feel that is too small; but if the committee will agree to try in Washington, as suggested by the gentleman here, who has given the matter a great deal of thought, 3½ per cent for $100, 3 per cent for $100 to $200, and 2½ per cent from $200 to $300, if they really believe that a man can operate under that, let us try it and go ahead.

Mr. REID. His suggestion is that we have the figure next year but to go ahead under the bill as it is.

Mr. COLEMAN. I would be willing to take a chance on the bill as is, but I believe that I would accept the amendment of the graduated plan.

Mr. GILBERT. If you gentlemen will agree to try it out, I do not think you can produce any reliable evidence here that you can operate any cheaper than that. Let us try it out.

Mr. REID. That is what he has said, that we will take a year's experience and then come back here.

Mr. HULL. You are going to regulate this under license. Why not broaden it to have control of rates and these extraordinary charges and other things, not say that they should prescribe a rule, that they may try this system or that system which may be introduced in this bill; but if we are going to regulate it, give power somewhere to protect all along the line instead of waiting for Congress to do something.

Mr. GILBERT. Will the gentleman accept the bill if that is done?

Mr. HULL. I do not know about the bill. Are you aware of the fact that 85 per cent are under $100? General statistics show that.

Mr. GILBERT. No. The average loan is $110, I will prove to the satisfaction of the committee, by evidence I will submit.

Mr. HENDERSON. There are no public records that will show that more than 20 per cent are under $100.

Mr. COLEMAN. I will suggest three amendments—graduated interest, and none but reliable people to be allowed to go into business in the District, and that they should be reliable to the extent of at least $25,000. We know there would be a lot of shysters get in. If it is put in, we want it reliable.

Mr. MCLEOD. That is the regular banking provision in all the States—$25,000 and upward.

Mr. HENDERSON. That will be acceptable to every one of the drafters.

STATEMENT OF W. C. HUSHING, LEGISLATIVE REPRESENTATIVE, AMERICAN FEDERATION OF LABOR

Mr. HUSHING. Mr. Coleman has covered our point of view very well, and I simply want to indorse the bill in behalf of the Federation with the amendments he has suggested.

Mr. GILBERT. I will put into the record the laws of the States.

STATEMENT OF W. C. ROBERTS, LEGISLATIVE REPRESENTATIVE OF THE DISTRICT OF COLUMBIA FEDERATION OF LABOR

Mr. ROBERTS. We heartily approve what Mr. Gilbert and Mr. [redacted]n have said. We have worked on this bill for a number of [redacted]nd approve this.

Mr. MCLEOD. The committee will stand adjourned to the 28th of April, 1930, when the opponents of the bill will be heard. I have requested the Chairman to communicate with Mr. Persons, vice president of this organization, that has been referred to.

Mr. GILBERT. He has an office here in the city.

(Thereupon, at 12 o'clock noon, the subcommittee adjourned to meet again Monday, April 28, 1930.)

SMALL LOANS IN THE DISTRICT OF COLUMBIA

FRIDAY, MAY 2, 1930

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE COMMITTEE ON THE
DISTRICT OF COLUMBIA,
Washington, D. C.

The subcommittee this day met, Hon. Clarence J. McLeod presiding.

Mr. MCLEOD. The subcommittee will be in order. Judge Gilbert has some statements that he wanted to insert in the record and letters. He did not want to be heard at this time, but will insert these in the record, and not take up the time of the committee. Is there any objection?

Mr. LAMPERT. None whatever. I would like to have you give him carte blanche to put into the record anything he wishes in regard to this matter.

I made a request that we invite Mr. Persons to be here. Is he here? I will renew the request.

Mr. MCLEOD. Is he one of the proponents' witnesses?

Mr. LAMPERT. He is executive vice president of the American Industrial Lenders' Association, with offices in the Tower Building here.

Mr. REID. Do you want a subpœna for him?

Mr. LAMPERT. Yes; if it is necessary, I want a subpœna for him.

Mr. GILBERT. I will insert these letters that I have permission to put in the record. These letters are from different States, where this same Sage Foundation small loans law is in effect, written by the official of the State having its administration in charge, to Hon. Frank L. Bowman, author of the bill.

(The letters referred to are as follows:)

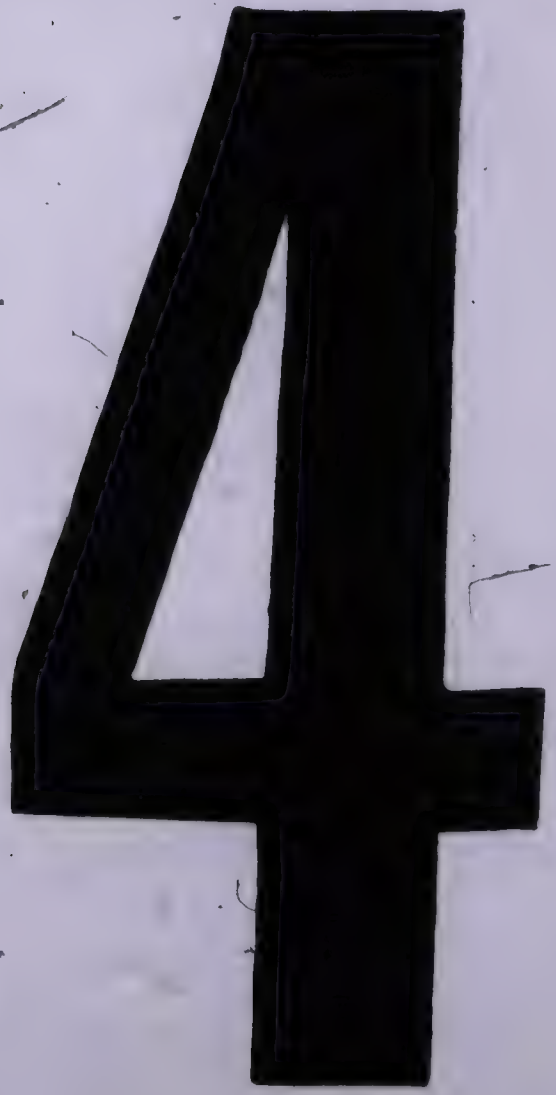
CONNECTICUT

HARTFORD, *January 7, 1930.*

HON. FRANK L. BOWMAN,
House of Representatives, Washington, D. C.

DEAR SIR: I have your letter of December 31 requesting me to give you certain information relative to the conduct of the small-loan business in Connecticut.

Small-loan companies in this State operate under an act which is fashioned after the so-called uniform small loan act. This act was placed upon the statute books in 1919, and has been amended from time to time to correct various evils which have been brought to light through close supervision. The rate of interest allowed under the act is 3½ per cent per month, or 42 per cent per annum, and it is stipulated that interest may not be compounded and must be computed on unpaid balances only. No fees or fines or other charges



NATIONAL BANKS—TRANSFERORS TO BE PREFERRED CREDITORS

HEARINGS

BEFORE THE

COMMITTEE ON BANKING AND CURRENCY HOUSE OF REPRESENTATIVES

SEVENTY-FIRST CONGRESS

SECOND SESSION

ON

H. R. 5634

A BILL TO PROVIDE THAT TRANSFERORS FOR COLLECTION OF NEGOTIABLE INSTRUMENTS SHALL BE PREFERRED CREDITORS OF NATIONAL BANKS IN CERTAIN CASES

MAY 16, 1930

UNITED STATES
GOVERNMENT PRINTING OFFICE
117283 WASHINGTON: 1930

PRELIMINARY PROGRESS REPORT MADE BY THE SUBCOMMITTEE ON BANKS TO THE GOVERNOR'S TAX COMMITTEE IN OHIO, MAY 15, 1930

Because of its very character, the business of banking touches all other interests in the State which are represented on the governor's tax committee.

Banks are interested in the taxation of real estate. Many bank loans are made upon real estate security, and too heavy a tax burden may impair the ability of the borrower to pay. In addition, approximately one-fourth of the taxes paid in Ohio by the banks themselves, are levied upon the real estate which they own.

The banks are interested in the tax burdens of manufacturers and merchants. Where these businesses are in competition with similar businesses located outside Ohio, the profits they may make are governed to no little extent by the taxes which they must pay here. And, as agriculture, industry, and general business prosper, so do the banks.

The banks are interested also in the taxation of intangibles. No one knows better than the banks, the extent to which citizens of Ohio have transferred their intangible wealth outside the boundaries of the State or have invested it in tax-exempt securities. It is no exaggeration to say that if all the intangible wealth which belongs to Ohio citizens were back within its boundaries, there would be no need for any Ohio business to go outside the State for any financial operation.

The banking subcommittee, therefore, has listened with interest to the proposals made by other subcommittees and has found merit in all of them. It realizes full well, of course, that necessary revenues must be raised and that if any particular class of property or of taxpayers is to pay less taxes than it now does, other means of providing the revenues must be found.

The great bulk of the property employed in banking consists of intangibles. The present laws of Ohio provide an effective means of assessing and taxing the capital assets of the banks at full rates. Because, under the uniform rule, other intangibles are, as is known, largely escaping taxation, it is at once apparent that the banks are now contributing at least their fair share of the public revenue.

In fact it is known that Ohio's present system imposes heavier burdens upon banks than are imposed by the laws of some neighboring competing States upon their banking institutions. (The subcommittee expects to assemble information on this point.) Meanwhile, we think it fair to assume that it is neither desirable nor possible to derive a greater amount of revenue from the banks of Ohio than that which has heretofore been raised from that source; and that if any change is made whereby property now escaping taxation is reached and made to contribute to the public revenues, the banks, together with other interests which have been bearing the burdens, shall benefit thereby.

Notwithstanding that the present situation thus represents a practical maximum, the amount of taxes paid by banks in Ohio when compared with the tota amount of revenue raised is not great. Even as compared with the amount of revenue raised from tangible and intangible personal property the contribution of the banks is relatively slight.

In the annual report of the tax commission for the year 1928, there appears as an appendix an abstract of the personal property in the grand duplicate of the State. The following figures appear:

Aggregate grand duplicate of personal property	$4, 131, 369, 475
Aggregate valuation of bank shares and property employed in private banking	271, 089, 500

These figures show that the aggregate assessment of capital employed in banking (exclusive of real estate owned by banks) is 6.5 per cent of the aggregate assessment of tangible and intangible personal property.

In terms of taxes paid, the percentage is slightly higher because banks are always located in municipalities, which, as a general rule, have relatively high tax rates. Using the figures furnished by the committee on allocation to State and local governments in its recent report (and including public utility real estate as personal property in order to make these figures comparable with those furnished by the tax commission) we find that the total revenue from the general property tax on tangible and intangible personal property is there stated to be $88,343,372. The tax on bank stocks, etc., amounted to $5,835,472, or 6.6 per cent of the total. The committee understands that Mr. Taft based his figures upon taxes levied and not upon taxes collected.

When it is remembered that these percentages would be greatly reduced if other intangibles were effectively assessed and taxed at rates equal to those

imposed upon bank shares, the relative insignificance of the contribution of the banks under any conceivable system of taxation thus becomes strikingly apparent.

If comparison is made between the amount of taxes payable by banks under the present general property system and the total amount of revenue from all sources the insignificance of the former in the total picture is even more apparent. In the report of the committee on allocation above referred to, total revenues collected from all sources are given as approximately $360,000,000. Reports of earnings and expenses made by the banks to the Comptroller of the Currency and the State superintendent of banks reveal that the total of State, county, and Federal taxes paid by Ohio banks was approximately $10,000,000, or 2.8 per cent of the total. This, of course, includes the Federal income taxes paid, and if these were eliminated, the percentage would be even less.

Bank real estate, of course, is no different from any other type of real estate in Ohio and banks must and will continue to pay the same kind and the same amount of taxes on any real estate which they may own as any other taxpayer will do. The sole question at issue, therefore, is the type and character and the amount of taxes which banks shall pay on their personal property.

In view of this situation the subcommittee on banks feels that it would be impertinent for the banking interests to offer any complete system of taxation for the State at large or even to indicate at this stage of the committee's deliberations, any preference among projected and possible systems. On the contrary, it seems to the subcommittee most appropriate to say that the banks desire no more than that the general system shall be so devised that the burden of taxation shall be equally distributed and that banks, in common with all other interests, shall bear their fair share of the whole.

Many references have been made in other reports and in the deliberations of the general committee to the fact that the power of the State to impose taxes on or with respect to national banks is limited and is governed by section 5219 of the Revised Statutes of the United States. Your subcommittee on banking is informed that the subcommittee on research has already taken cognizance of the legal questions involved and has requested a comprehensive opinion from the subcommittee on constitutional law and drafting, which, when submitted, is to be generally circulated. We content ourselves with stating the obvious fact that, whatever the limitations imposed by the Federal law may be, they must be observed in fitting national banks into the scheme of taxation which the general committee shall finally approve. It need only be added that the object of Congress, in attaching conditions to the permission which it has given to the States to tax national banks, was to insure that such banks should bear their fair share of State and local taxation and no more.

The committee is firmly of the opinion that, though the Federal legislation affects national banks only and does not prohibit discrimination favorable to such banks, the policy of the State should be to treat its own institutions in matters of taxation upon a basis of equality with those incorporated by the Federal Government. Therefore, though this is but a preliminary report, we submit for the consideration of the general committee the thought that, with regard to legal limitations as well as from other points of view, the business of banking as conducted in Ohio, whether under national or State charter, should be considered and treated as a unit.

The committee is at work gathering information primarily for its own advisement bearing upon the practical effect of various forms of taxation possible under the Federal statute to be applied to banks. It may be that the information thus assembled when complete in form and substance will be serviceable to the research committee and the other subcommittees. Informal arrangements have been made to avoid duplication of effort as between the work of this committee in that regard and that of the research committee and to promote coordination in the conduct of these investigations.

Respectfully submitted.

T. J. DAVIS,
Chairman the Subcommittee on Banks.

STATEMENT BY R. E. HARDING, VICE PRESIDENT FORT WORTH NATIONAL BANK, FORT WORTH, TEX.; MEMBER SPECIAL COMMITTEE ON SECTION 5219 A. B. A.

At present Texas imposes an ad valorem tax on bank shares, and the proposed amendment to section 5219 now before the committee does not change this section as it now applies to those States that employ an ad valorem tax, except that it establishes a yardstick by which a comparison of taxes of national banks may be had with taxes imposed upon mercantile, manufacturing, and business corporations.

The bankers of Kentucky felt and still feel that they were thus assuming their full share of the tax burden. Of course the bankers of Kentucky are still entitled to the protection of 5219, but no attack on the present law has ever been made since its passage and we are quite sure that none will be made so long as the State keeps its part of the gentleman's agreement.

As I understand it, the status of bank taxation in Kentucky that I have outlined is unchanged under this proposed amendment of section 5219 unless the State of Kentucky sees fit to act under the second proviso of section 1, clause B, in which event it would have to set up some new machinery requiring disclosures for manufacturers, merchants, and others not now required, but which would be necessary under this amendment 5219 in order to provide a yardstick for the taxation of shares of national banks.

STATEMENT BY WALTER KASTEN, PRESIDENT OF FIRST WISCONSIN NATIONAL BANK OF MILWAUKEE, WIS., AND MEMBER OF THE COMMITTEE OF THE AMERICAN BANKERS ASSOCIATION ON SECTION 5219

A system of national banks fulfills a paramount need of the Federal Government in providing a medium of credit under national supervision through which our vast trade and commerce may be financed and a medium of finance for the Government itself in times of financial stress.

The protection given to national banking associations as agencies of the Federal Government, therefore, has a broader purpose than the protection of the individual stockholder. Such protection guarantees the continued integrity of an arm of the Government itself.

Because of the governmental interest in maintaining these financial agencies of the Government, amendment of section 5219 of the United States Revised Statutes should be permitted only to the extent that such amendment is consistent with the protection given to national banking associations at the present time.

The amendment of section 5219 of the United States Revised Statutes as proposed by the tax commissioners of the several States and as consented to by the committee of the American Bankers Association on section 5219, seems to me to preserve the underlying protective principles of section 5219 and at the same time to give to the States a broader choice in their methods for taxing national banking associations. Such amendment undoubtedly will facilitate the collection of a fair burden of taxation from national banking associations in a large number of States.

I, therefore, am in favor of and advocate the enactment by the Congress of this amendment, believing that it will go far to settle such controversy as exists at present over the taxation of national banking associations.

STATEMENT BY CHARLES H. MYLANDER, VICE PRESIDENT FIRST NATIONAL BANK, CINCINNATI, OHIO, AND MEMBER SPECIAL COMMITTEE ON SECTION 5219 A. B. A.

From 1851 to the present, Ohio has raised all of its local revenues and, at times, a part of its State revenues, by means of a system of general property taxes. By reason of the rigid provision for uniformity in the State constitution which provided "that all property, both personal and real, shall be taxes at its true value in money, according to a uniform rule," assessments presumably have been at full cash value, and rates on both real estate and personal property uniform.

Under this system the banks in Ohio have paid the full local property rate upon such real estate as they might own, and have paid the same rate upon the value of their shares, which for the most part has been computed by adding together the capital, surplus, and undivided profits of the bank, and deducting therefrom the value of the real estate owned.

It will readily be seen that in Ohio, as in all of the other general property-tax States, the banks paid far more than their share of the general tax burden on property other than real estate. In the year 1926, for example, the total value of all property listed for taxation in Ohio was approximately $13,000,000,000. Of this, $9,000,000,000 was real estate; $1,500,000,000 property of public utility corporations; $250,000,000 automobiles, and $250,000,000 shares of State and National banks. It can readily be seen, therefore, that all of the other personal property located within the State of Ohio, including the livestock and farm products located upon its farms; the household goods and jewelry of its 6,000,000 people; the machinery, raw materials and finished products of Ohio's thousands of industries and the stocks of goods on the shelves of its thousands of merchants—to say nothing of the billions of dollars' worth of wealth represented by bonds, notes, mortgages, and other forms of intangible property, was valued for taxation at only about $2,000,000,000.

Due to the fact that so little of the competing moneyed capital in the State was reached for taxation, three national banks located at Columbus, Ohio, acting under the guidance of the Ohio Bankers' Association, in July, 1927, started proceedings in the Federal District Court for the Southern District of Ohio, seeking to enjoin the collection of the last half of the 1926 taxes levied upon the shares of stock of these three institutions. In their bill of complaint, it was charged that the provisions of section 5219 which forbade a State to tax the shares of a national bank at a rate "higher than that assessed upon other moneyed capital in the hands of individual citizens coming into competition with the business of national banks" was being violated.

Particular emphasis was laid by the banks upon the fact, first, that the shares of stock in building and loan associations were taxed as a credit, and a deduction of the shareholders' debts allowed therefrom, a privilege not extended to the owners of shares of national banks. Second, that finance companies, real-estate mortgage companies, and other incorporated money lenders were enabled under the laws of the State to establish a statutory residence in an outlying tax district where rates were much lower than in the city in which their principal business was conducted, a privilege which also was denied to the national-bank shareholders.

Third, that the general notorious breakdown of the tax machinery, in so far as the listing of intangibles was concerned, caused the banks to pay more taxes than they would have paid had this other intangible property been reached and taxed.

Lengthy hearings were held before a master commissioner, and in July, 1929, the master presented his report to the court, in which he covered both the facts and the law in the case, and upheld the contention of the banks in every particular, recommending to the court that a permanent injunction be issued, restraining the county treasurer from collecting any of the taxes on the shares of the three banks.

Meanwhile, similar suits had been filed on behalf of these three plaintiff banks, covering the taxes levied for the years 1927, 1928, and 1929.

In addition, numerous other national banks located in other counties in the State of Ohio had filed similar applications for injunctions against the collection of taxes on the shares, alleging the same kind of discrimination as that brought out in the Columbus case. For the most part, these later suits were brought in the State courts, and in every case temporary orders were issued by the court and further hearings held in abeyance, awaiting the outcome of the Columbus case.

As a result of this litigation, something over two and one-half millions of dollars of taxes which had been levied on shares of Ohio national banks are to-day unpaid, awaiting the outcome of these cases.

Meanwhile, in 1929, the general assembly of the State of Ohio, submitted to the electors a proposal to amend the tax sections of the State constitution, which proposal was approved by the voters at the November, 1929, election. Briefly, this proposal, which becomes effective January 1, 1931, will permit the Legislature of Ohio to write a new tax code for the State, subject to only two limitations; first, that real estate and improvements thereon must be taxed according to value, and by a uniform rule; second, that the rate levied on any property taxed according to value shall not exceed 1½ per cent of the true value in money of the said property.

Following the approval of the constitutional amendment Governor Cooper of Ohio, selected a committee of citizens to investigate and to present to the next session of the legislature, plans for a new tax code. Among the many subcommittees named by the Governor's committee, as it is known in Ohio, was one on the taxation of banks. This committee has just filed its first report, copy of which is attached hereto, and made a part of this statement.

It will thus be seen that the situation in Ohio is different from that of almost any other State in the Union. With the State changing its entire tax system within the next 12 months, the legislature is free to fit its system of bank taxation into the general scheme and to comply with the restrictions on the taxation of national banks as set down by section 5219. There should be no great difficulty in Ohio.

In so far as the proposed agreed bill to amend section 5219 is concerned, it will, of course, give to the Legislature of Ohio an opportunity (if it decides to classify personal property for the purpose of taxation) to levy a higher rate upon bank shares than it does upon notes, bonds and other intangible property. A higher rate on bank shares would be accepted by the banks of Ohio, without question, providing other financial, mercantile, manufacturing and business corporations pay as heavy a burden as do the banks.

Mr. LUCE. Unless there is occasion for further oral testimony, we will not sit to-morrow, but we will adjourn now.

Mr. COOKE. I should like, Mr. Chairman, to put into the record a survey of bank taxation in the United States, third edition, prepared by our committee as of September, 1929. It contains in parallel columns a summary of the bank taxing systems of all the States and the District of Columbia. It also has a table as to the taxation on intangibles in certain States.

Mr. LESER. I had a copy of it sent to me, and there are some mistakes about Maryland.

Mr. ARMSON. And some mistakes about Minnesota, too.

A VOICE. And Rhode Island.

Mr. LESER. It is a very poorly prepared pamphlet.

Mr. WINGO. Let us see if this is going in. If it has been challenged by three men as to its correctness, had it not better be corrected before it goes into the record?

Mr. COOKE. We do not care anything about it. I do not know that it would have any probative value as to the matters under discussion. There is no substantial misrepresentation.

Mr. ARMSON. It represents that we tax bank shares 30 per cent, when it is 45 per cent, and it also says that we tax real property about two-thirds of the actual value, which is an incorrect statement, because our real estate in Minnesota is taxed as close to 100 per cent full value as it is possible.

Mr. COOKE. Our correspondents seem to be well posted, and they gave that information, but if it is not correct we are sorry.

I should like to have the witnesses who were here expecting to testify on behalf of the American Bankers Association to rise while I call their names.

Mr. James Ringold, president United States National Bank, Denver, Colo.

Mr. Raymond R. Mattison, president, the National Bank of Tacoma, Tacoma, Wash.

Mr. Nicholas H. Dosker, vice president, the Louisville Trust Co., Louisville, Ky.

Mr. Charles H. Mylander, vice president, the First National Bank, Cincinnati, Ohio.

Mr. David M. Auch, secretary, Ohio Bankers Association, Columbus, Ohio.

Mr. E. A. Onthank, president Safety Fund National Bank, Fitchburg, Mass.

Mr. R. E. Harding, president, the Fort Worth National Bank, Fort Worth, Tex.

Mr. S. R. Quaden, comptroller, First Wisconsin National Bank, Milwaukee, Wis.

Mr. J. R. Cain, jr., vice president, the Omaha National Bank, Omaha, Nebr.

Mr. LUCE. I did not realize that we were surrounded by so many witnesses on this side. If you want to have a hearing to-morrow morning, I do not want you to go home feeling you were treated unfairly. Or they may submit individual statements if they so desire.

Mr. COOKE. I do not suggest that, but if you should not follow the suggestion of the tax commissioners here and of the bankers, we would like to come back. This bill was prepared not at the instigation of the banks. The initiative did not come from us for any amendment, but we joined in it wholeheartedly because we think it is in the public interest; but, as I said, if this is not adopted, we would like to come back.

Mr. LUCE. I want to feel quite sure that you do not want to be heard.

Mr. COOKE. You would have difficulty in maintaining a quorum on Saturday, and if we could make that understanding, we will not have to trouble the committee to-morrow.

Mr. WINGO. I have just been handed a statement that I think ought to go into the record. Mr. Foley would like to introduce a statistical document.

Mr. FOLEY. I should like to offer a statistical survey of national banks prepared by Moody's Investment Service, made up by computations found in their own records and from data obtained from the Secretary of the Treasury, which perhaps pictures to some extent the information that Judge Paton has in his tables.

Mr. WINGO. You offer it in place of this one here?

Mr. FOLEY. No; supplementing it.

Mr. LUCE. There are rules of the Committee on Printing with respect to this matter of reproducing diagrams with which I am not informed in detail, but I have the impression that there may be some criticism.

Mr. WINGO. I think the committee can arrange that.

Mr. LUCE. The clerk of the committee informs me that we are being criticized every week about the charts we are submitting. I do not care to take the responsibility for it; I shall have to leave that subject to the approval of the chairman of the committee.

Mr. FOLEY. We can file copies for each member of the committee.

(Additional statements were presented to the committee for the record, as follows:)

STATEMENT OF N. H. DOSKER, VICE PRESIDENT LOUISVILLE TRUST CO. LOUISVILLE, KY.

Regarding the amendment to section 5219 of the Revised Statutes of the United States, as drawn by the joint drafting committee, representing the Association of State Tax Commissioners and the American Bankers Association, upon which a hearing was had before the House Committee on Banking and Currency on May 9, 1930, as a substitute bill for the Goodwin bill before that committee:

Representing the bankers of the State of Kentucky, both State and national, as the chairman of the jurisprudence committee of the Kentucky Bankers Association, I desire merely to say that the Kentucky bankers favor this bill as the best solution that can be found to settle finally the long agitation for an amendment to 5219 that will meet the views of the various tax commissioners of 5219 that will meet the views of the various systems of taxation, and the various States operating under various systems of taxation, and the bankers of the country as represented by the American Bankers Association.

Being a State in which the tax rate on intangibles is less than it is on tangibles, Kentucky would operate under section 1 (b) of the proposed amendment.

The rate on intangibles in Kentucky is 50 cents on $100 of market value and, therefore, strictly speaking, bank shares in Kentucky can not be taxed in excess of this amount.

Several years ago, the Kentucky Bankers Association introduced a bill in the legislature which was duly passed and is now the law by which Kentucky bankers permitted themselves to be taxed in excess of the limitation provided by 5219, yet a great deal less than the unfair tax in effect prior to that time.

The bankers of the State of Kentucky now pay on their shares on capital, surplus, and undivided profits a tax of 50 cents on $100 to the State, 20 cents to the counties, 20 cents to the cities and 40 cents to schools, or a total of $1.30, as against a former tax varying from $3 to $4 per $100.

Mr. LUCE. The hands of the clock are approaching half-past 5.

Mr. WINGO. Thank you very much for that information. I am to blame for his going along.

We appreciate your coming here.

Mr. LUCE. There remain but three members of the committee in attendance.

Mr. SEIBERLING. I have a question I would like to ask.

If you have a branch in another State, who gets the tax?

Mr. PIERCE. Those are not allowed. They have to be in California.

Mr. LUCE. If there are any other gentlemen present who desire to add further to the testimony that has been given to-day, I am sure that the chairman of the committee will be glad to consider the insertion in the record of statements.

Mr. WINGO. May I make this suggestion?

To-day I have had two different members of the House who are not members of this committee who made the same request on me—and several times before when this tax question was up lawyers of the House have brought this up—for a pencil memorandum giving the principal authorities covering this situation. I think in one of the briefs filed to-day we had a citation of the leading cases, but I think that if Judge Paton or some other gentleman could prepare and give us that, it would be helpful—simply a citation of the leading authorities covering this question of State taxation.

Mr. SULLIVAN. We have them in the printed brief we left with you.

Mr. WINGO. But that is scattered through the brief.

Mr. PATON. That is to say, the Federal decisions affecting the validity of it?

Mr. WINGO. The leading cases interpreting section 5219.

Mr. PATON. All right. State decisions, or just Supreme Court decisions?

Mr. WINGO. Those that you think are important. Do not give us a long list, but those that you think are the key cases, so that the lawyers in the House not on the committee who pick up our hearings may find them there.

Mr. PATON. All right.

(The list of citations referred to are reproduced below.)

CHRONOLOGICAL INDEX TO DIGEST OF ALL UNITED STATES SUPREME COURT DECISIONS ON THE TAXATION OF NATIONAL BANK SHARES

(With additional Federal and State court decisions involving sec. 5219, U. S. Rev. Stats.)

[May 27, 1929, Macallen Co. *v.* Mass. (279 U. S. 620), opinion refers to sec. 5219]
1927. First National Bank of Hartford *v.* Hartford (Wisconsin), 273 U. S. 548.
1927. Minnesota *v.* First National Bank of St. Paul (Minnesota), 273 U. S. 561.
1927. Georgetown National Bank *v.* McFarland (Kentucky), 273 U. S. 568.
1926. First National Bank of Guthrie Center *v.* Anderson (Iowa), 269 U. S. 341.
1923. Des Moines Bank *v.* Fairweather (Iowa), 263 U. S. 103.
1922. Heisler *v.* Thomas Colliery Co. (Pennsylvania), 260 U. S. 245.
1922. Peoples National Bank of Kingfisher *v.* Board of Equalization (Oklahoma), 260 U. S. 702.
1922. First National Bank of Gulfport *v.* Adams (Mississippi), 258 U. S. 362.
1921. Merchants National Bank *v.* Richmond (Virginia), 256 U. S. 635.
1919. Bank of California *v.* Richardson (California), 248 U. S. 476.
1919. Bank of California *v.* Roberts (California), 248 U. S. 497
1913. Amoskeag Savings Bank *v.* Purdy (New York), 231 U. S. 373.
1910. Citizens National Bank *v.* Kentucky (Kentucky), 217 U. S. 443.
1910. First National Bank *v.* Estherville (Iowa), 215 U. S. 341.

1908. First National Bank of Albuquerque *v.* Albright (New Mexico), 208 U. S. 548.
1905. *Covington *v.* First National Bank of Covington (Kentucky), 198 U. S. 100.
1905. San Francisco National Bank *v.* Dodge (California), 197 U. S. 70.
1903. People's National Bank *v.* Marye (Virginia), 191 U. S. 272.
1901. (Same case below), 107 Fed. 590.
1902. Jenkins *v.* Neff (New York), 186 U. S. 230.
1902. Lander *v.* Mercantile Bank (Ohio), 186 U. S. 458.
1902. *Covington *v.* Covington First National Bank (Kentucky), 185 U. S. 270.
1901. Commercial Bank *v.* Chambers (Utah), 182 U. S. 556.
1899. Third National Bank of Louisville *v.* Stone (Kentucky), 174 U. S. 432.
1899. First National Bank of Wellington *v.* Chapman (Ohio), 173 U. S. 205.
1899. Owensboro National Bank *v.* Owensboro (Kentucky), 173 U. S. 664.
1897. Merchants Bank *v.* Pennsylvania, 167 U. S. 461.
1897. Aberdeen Bank *v.* Chehalis County (Washington) 166 U. S. 440.
1897. Bank of Commerce *v.* Seattle (Washington), 166 U. S. 463.
1896. First National Bank of Garnett *v.* Ayers (Kansas), 160 U. S. 660.
1895. Lindsay *v.* Shreveport Bank (Louisiana), 156 U. S. 485.
1866. Churchill *v.* Utica (New York), 154 U. S. 550.
1871. Van Slyke *v.* Wisconsin (Bagnall *v.* Wisconsin), 154 U. S. 681.
1891. Talbot *v.* Silver Bow County (Montana), 139 U. S. 438.
1890. Palmer *v.* McMahon (New York), 133 U. S. 660.
1888. Whitbeck *v.* Mercantile Bank (Ohio), 127 U. S. 193.
1888. Bank of Redemption *v.* Boston (Massachusetts), 125 U. S. 60.
1887. Davenport Bank *v.* Davenport (Iowa), 123 U. S. 83.
1887. Mercantile Bank *v.* New York, 121 U. S. 138.
1886. (Same case below), 28 Fed. 776.
1887. Newark Banking Co. *v.* Newark (New Jersey), 121 U. S. 163.
1887. Stanley *v.* Supervisors of Albany (New York), 121 U. S. 535.
1882. Supermann *v.* Stanley (New York), 105 U. S. 305, 316.
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1881. Hills *v.* Exchange Bank (New York), 105 U. S. 319.
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1879. Pelton *v.* National Bank (Ohio), 101 U. S. 143.
1879. Cummings *v.* National Bank (Ohio), 101 U. S. 153.
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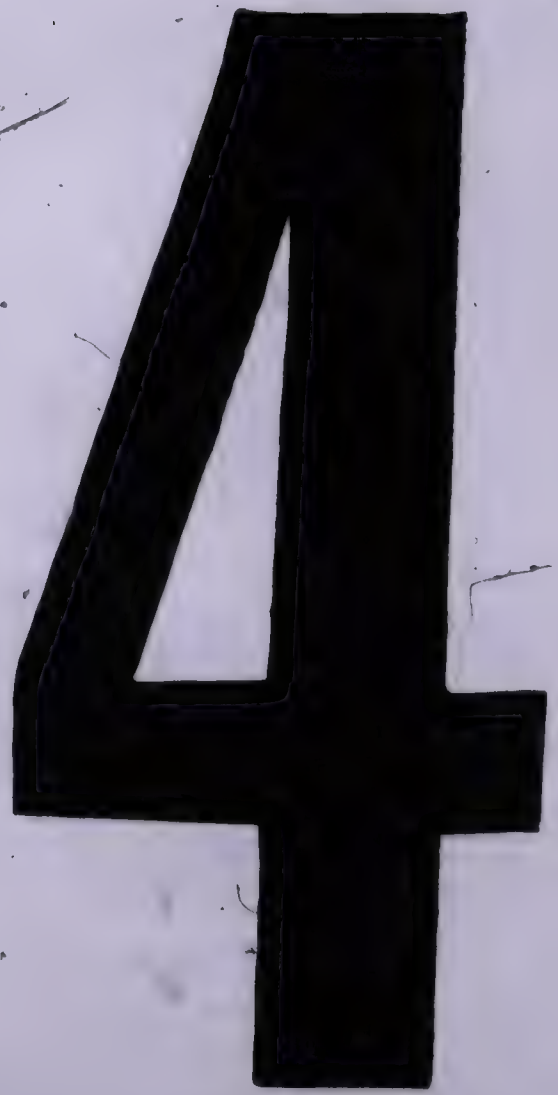
1877. Adams *v.* Nashville (Tennessee), 95 U. S. 19.
1876. People *v.* Commissioners of Taxes' Assessments (New York), 94 U. S. 527.
1876. Waite *v.* Dowley (Vermont), 94 U. S. 527.
1874. Hepburn *v.* School Directors (Pennsylvania), 23 Wall. 480.
1873. Tappan *v.* Merchants National Bank (Illinois), 19 Wall. 490.
1870. Dows *v.* City of Chicago (Illinois), 11 Wall. 108.
1869. National Bank *v.* Commonwealth (Kentucky), 9 Wall. 353.
1869. Lionberger *v.* Rouse (Missouri), 9 Wall. 468.
1868. Austin *v.* The Alderman (Massachusetts), 7 Wall. 694.
1866. People *v.* Tax Commissioners (New York), 4 Wall. 244.
1866. Bradley *v.* The People (Illinois), 4 Wall. 459.
1865. Van Allen *v.* The Assessors (New York), 3 Wall. 573.
1927. Binder *v.* First National Bank of St. Louis (certiorari denied, 274 U. S. 743), 16 Fed. 990.
1927. Central National Bank *v.* McFarland (Kansas), 20 Fed. (2d) 416.
1891. First National Bank *v.* Lindsay (Louisiana), 45 Fed. 619, 626.
1890. Whitney National Bank *v.* Parker (Louisiana), 41 Fed. 402, 407, 409.
1927. Comanche County *v.* American National Bank (Oklahoma), 252 Pac. 408.
1927. People ex rel. First National Bank of Olean *v.* Breder (New York), 129 Misc. 787.
1926. People ex rel. Pratt *v.* Goldfogle, 242 N. Y. 277.
1926. (Companion cases), 242 N. Y. 540-546.
1922. People ex rel. Hanover National Bank *v.* Goldfogle et al., 234 N. Y. 345.
1915. Second National Bank *v.* City of New York, 213 N. Y. 457.
1908. People ex rel. Bridgeport Savings Bank *v.* Feitner, 191 N. Y. 88.
(Montana) Commercial National Bank *v.* Custer County, 245 Pac. 259.
(Montana) Miles City National Bank *v.* Custer County, 245 Pac. 265.



NATIONAL BANKS—TRANSFERORS TO BE PREFERRED CREDITORS

HEARINGS

BEFORE THE

COMMITTEE ON BANKING AND CURRENCY HOUSE OF REPRESENTATIVES

SEVENTY-FIRST CONGRESS

SECOND SESSION

ON

H. R. 5634

A BILL TO PROVIDE THAT TRANSFERORS FOR COLLECTION OF NEGOTIABLE INSTRUMENTS SHALL BE PREFERRED CREDITORS OF NATIONAL BANKS IN CERTAIN CASES

MAY 16, 1930

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON: 1930

117283

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NATIONAL BANKS—TRANSFERORS TO BE PREFERRED CREDITORS

FRIDAY, MAY 16, 1930

HOUSE OF REPRESENTATIVES,
COMMITTEE ON BANKING AND CURRENCY,
Washington, D. C.

The committee met in the committee room, Capitol, at 10.30 o'clock, a. m., Hon. James G. Strong presiding.

Mr. STRONG. The committee will come to order. We are met this morning for the purpose of a hearing on H. R. 5634, and I will insert a copy of the bill in the record at this point.

(The bill referred to is printed in full as follows:)

[H. R. 5634, Seventy-first Congress, second session]

A BILL To provide that transferors for collection of negotiable instruments shall be preferred creditors of national banks in certain cases

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That upon appointment of a receiver of any national bank the transferor of a negotiable instrument transferred to such bank for collection shall be a preferred creditor in the amount of the liability of such bank, if such negotiable instrument (1) is drawn against the delivery of an accompanying document of title relating to real or personal property; (2) has been transferred to such bank after the enactment of this act; and (3) has been collected, either in whole or in part, by such bank. The provisions of this act shall not apply to any case where the transferor is a depositor in the bank and the proceeds of collection have been credited by the bank to his account.

Mr. STRONG. Mr. Ludlow, who comes from Indianapolis, Ind., is present, and desires to present some matters to the committee.

STATEMENT OF HON. LOUIS LUDLOW, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Mr. LUDLOW. Mr. Chairman and gentlemen of the committee, I thank you for the courtesy of the hearing and I shall try to show my appreciation by being brief

I have prepared a little statement which I should like to have go into the record. I would indeed consider myself derelict in the performance of my duty if I did not appear here to-day in behalf of a very large and important business constituency which I represent in support of House bill No. 5634, introduced by Mr. Strong of Kansas, to provide that transferors for collection of nonnegotiable instruments shall be preferred creditors of national banks in certain cases.

According to my way of thinking this bill is conceived in sound thinking and honest practice. It seems to me that it corrects a very obvious error and injustice in commercial procedure that needs to be corrected. As I visualize the situation a business man who nowadays

sends a sight draft to a bank in another city for collection is in about the same fix a man would be in if he entered a bank and while there inadvertently dropped a thousand dollar bill on the floor. A bank employee grabs the bill and the owner, demanding that his property be restored to him, is repulsed with the curt announcement:

> You can not have your bill because you had the bad luck to drop it in this bank. We will keep your money but some time you may get back as much as 10 per cent of it.

That is the way the thing works now. The connection which the business man has with the out of town bank to which he intrusts his collection is usually about as accidental and casual as indicated in this illustration of the man who happens to be in a bank and carelessly drops a bill there. Under such circumstances it is only right and proper that the business man or firm that sends the bill on for collection should be a preferred creditor.

I know it is argued that the local creditors living in the same city where the bank is located also are victimized when the bank fails and are entitled to the same consideration as the out-of-town firm that uses the bank only for a temporary and specific purposes, namely, the service of making a collection. In my opinion the two cases are not parallel. The local creditor has means of knowledge of the condition and personnel of the bank which the out-of-town firm can not possess. In a small town everybody knows the president and cashier of a bank. If they are plungers, if they are untrustworthy, it is a matter of common gossip. In a larger city bank officials are known at least by reputation and a local citizen has means which an outsider does not have of ascertaining a bank's solvency and dependability. So I say that an outside firm which uses a bank as a mere temporary agency for a specific purpose should not be penalized by being forced into the class of general creditors after the bank fails.

In a letter to me Merritt Fields, executive manger of the Indianapolis Association of Credit Men, one of the keenest and ablest business men I have ever known, states succinctly the purposes to be achieved by the Strong bill and his exposition is so clear and convincing that I am asking that it go into the record. He says:

> Briefly here is the kind of a situation it covers. Suppose the Acme-Evans Co. (for illustration) gets an order for a carload of flour from a customer in Minneapolis; Acme-Evans ships the car of flour to the customer, sending a sight draft with bill of lading attached to a Minneapolis bank instructing the Minneapolis bank to remit the money to Acme-Evans Co. as soon as the customer pays for it and the customer can not get the bill of lading and get possession of the flour until he has paid the bill at the Minneapolis bank. Now in the meantime after the customer has paid and secured possession of the flour and before the bank has remitted the money to Acme-Evans Co., the bank fails. Under the law as it now stands in most States, the Acme-Evans Co. is not a preferred credit or—they have to take their chances as a general creditor of the bank that fails, which of course, is all wrong. The Acme-Evans was never a depositor of the Minneapolis bank and the Minneapolis bank was merely a trustee for hire.

I have received letters from 76 business firms of Indianapolis in support of this bill. Many of these are known nationally and internationally. The firms that have written to me are as follows:

Eli Lilly & Co.
E. C. Atkins & Co.
Kingan & Co.
Van Camp's.
Engineering Metal Products Corporation.
General Outdoor Advertising Co.
The Wm. H. Block Co.

Leedy Manufacturing Co.
Fayette-Jellico Coal Co.
Thomas & Skinner Steel Products Co.
Homer McKee Co.
Thomas Madden Son & Co.
Inland Box Corporation.
The House of Crane.
Insley Manufacturing Co.
Tanner & Co.
Harry B. Mahan Co.
Fairway Coffee Co.
The Olds Co.
U. S. Corrugated Fiber Box Co.
Emerson Scheuring Tank Co.
Vonnegut Hardware Co.
Fit Rite Cap Co.
Hatfield Electric Co.
Baur Tack Co.
Knefler Bates Co.
Indiana Wheel & Rim Co.
Fahnley & McCrea Millinery Co.
Central Rubber & Supply Co.
Diamond Chain & Manufacturing Co.
Peoples Coal & Cement Co.
Central Wall Paper & Paint Co.
The H. Lieber Co.
Indiana Grain Dealers' Association.
Acme-Evans Co.
Lawrenceburg Roller Mills Co.
Levey Printing Co.
P. R. Mallory & Co. (Inc.).
Indiana Wall Paper Co.
Paper Package Co.
The Sargent-Gerke Co.
Oakes-Swenson Co.
The Miller Rubber Co.
Fabric Products Corporation.
The Rockwood Manufacturing Co.
Kiefer-Stewart Co.
Ogle Coal Co.
Hide Leather & Belting Co.
The Peoples State Bank.
Hamilton, Harris & Co.
The Standard Metal Co.
Griffith Victor Distributing Corporation.
Indianapolis Paint & Color Co.
Dockwiler & Kingsbury Co.
The Goodyear Tire & Rubber Co. (Inc.)
Indianapolis Belting & Supply Co.
Gregory & Appel, Ind.
Indianapolis Varnish Co.
Long-Knight Lumber Co.
U. S. Encaustic Tile Works.
C. P. Lesh Paper Co.
Indianapolis Glove Co.
Westinghouse Electric Supply Co.
Holcomb & Hoke Manufacturing Co.
Hoosier Electric Refrigerator Corporation.
Hall-Neal Furnace Co.
Blud-Rub Manufacturing Co.
Lilly Varnish Co.
Crescent Oil Co.
Prest-O-Lite Storage Battery Sales Corporation.
A. Burdsal Co.
Can Camp Hardware & Iron Co.
International Printing Co.
Farmers Grain Dealers Association of Indiana, and
Sentinel Printing Co.

I do not wish to encumber the record by inserting the text of these letters, but with your permission I shall file them with the committee. They comprise a mass of documentary evidence of great force and persuasion in favor of this bill.

I am very much obliged, Mr. Chairman.

Mr. HOOPER. Have you had any letters in opposition?

Mr. LUDLOW. Not one letter.

Mr. HOOPER. Do you know what the counterclaim is as to the bill—the reasons that are advanced why it would not be a sound matter?

Mr. LUDLOW. I have never heard the argument on the other side. I assume all creditors should be treated equally, but I tried to say that I thought there was a differentiation between the two types of creditors.

I am not a banker and not familiar with the technicalities of the situation. I am speaking of the justice of the situation.

Mr. HOOPER. I was wondering if you had heard what the other side of the argument was.

Mr. LUDLOW. No. My constituents as far as I have heard seem to be unanimously in favor of the bill, and, as their Representative, I should like to have this material considered by the committee.

Mr. STRONG. Does any other member of the committee wish to ask any questions?

Mr. DUNBAR. I think Mr. Ludlow has presented the case very clearly and very conclusively. It is in accord with my idea.

Mr. LUDLOW. I think, Mr. Chairman, Mr. Dunbar is perfectly acquainted with these people. Being an exceptionally fine business man himself, he knows these people as well as I do. He knows the dependability of the firms, which are among the best in the whole country. All seem to be of one mind.

Mr. DUNBAR. If I sell a bill of goods to a man or a carload of goods to a man and they are sent to him with the bill of lading attached, and that man pays for that car of goods, receiving his bill of lading before he receives his goods, it is the business of that bank, forthwith, to remit to the man who sent the bill of lading, so as to reimburse him and not, as in some instances, to keep the money in the bank for two, three or four days and if the bank fails in the interim, he is counted as one of the common creditors. It does not seem to me right.

Mr. LETTS. Suppose it happens the very day the check comes in from the drawee of the draft—what would you say then?

Mr. DUNBAR. I should say that that money should forthwith be remitted.

Mr. LETTS. They could not do it until the mail went out.

Mr. DUNBAR. No; they could not do it until the mail went out, but it should be done then.

Mr. LETTS. That is the way these things happen, as I understand it—a draft is presented and the drawee accepts it and gives his check on that bank and the bank charges it up against his account, but before they have an opportunity of transmitting it—they have already changed the credits on the records of the bank—but before they can transmit it, the bank becomes insolvent. What would you say there, were there is no negligence on the part of the——

Mr. DUNBAR. It was never the intention of the man who sent the draft, that his money should be deposited in that bank as a depositor. It was never his intention in the world, and it is the same as presenting a check to that bank drawn on a foreign bank, and if he passes it over the counter and while the man is looking for the money to pay him, the bank would go into the hands of a receiver, the bank would say, "No; we have to keep this check; the bank has failed since you presented the check and so you will have to come in with the common creditors."

Mr. GOODWIN. Is there any statute— —

Mr. WINGO. Just one moment; I want to challenge the statement of my friend from Indiana. The decisions of the courts are to the contrary.

Mr. DUNBAR. What are the decisions of the courts?

Mr. WINGO. No title passed to that check. Even its physical possession could not be insisted upon.

Mr. STRONG. Have you finished your statement, Mr. Wingo?

Mr. WINGO. My friend made the suggestion that while a man is passing a check—a man, a rank outsider—passing a check across the counter and asking cash on it, before the cash was paid out the receiver took charge of the bank, and that they could then retain possession of the check.

Mr. DUNBAR. And you say no?

Mr. WINGO. Yes; I certainly do.

Mr. LETTS. Here is the proposition: They present the draft and the drawee issues his check, and his bank charges him with it, and a credit is entered for the drawer of the draft, and perhaps they send a New York bill of exchange or check out. But before that reaches the drawer of the draft and is paid, the bank becomes defunct.

Mr. DUNBAR. I can see how that operates, but in my opinion, still if a man has a bill of lading which he pays for and the money belonged to the shipper of the goods, that money belongs to the shipper of the goods and he should receive it notwithstanding these delays occasioned by the payment and due to the failure of the bank in the meantime. Why should he not receive it?

Mr. LETTS. Is his ownership to that money any better than the ownership of the depositor to his money in the bank?

Mr. DUNBAR. Yes; because the depositor usually intends that his deposits shall be a running account, perpetually running from day to day, and those deposits remain because of his confidence in and knowledge of the bank.

Mr. LUDLOW. Amplifying the thought he expressed there, I should like to ask my colleague if this money, in any sense of justice, to say the least, ever belonged to the bank?

Mr. DUNABR. None in the world.

Mr. LETTS. The depositor's money does not belong to the bank either.

Mr. DUNBAR. But this money is not put into the bank for the bank to hold in custody for this man to check against. It was never intended this other money was to be given to the bank to hold in custody and paid when a check has been presented.

Mr. WINGO. Has Mr. Ludlow made his statement?

Mr. STRONG. Yes.

Mr. WINGO. I want to ask Mr. Ludlow for his opinion on this——

Mr. LUDLOW. I am not a banker or a lawyer.

Mr. LETTS. I want the record to show that the trend of my inquiries should not be regarded as showing my attitude of mind. I simply wanted to bring out the situation.

Mr. WINGO. Do I understand you favor this bill?

Mr. LUDLOW. I do.

Mr. WINGO. Have you taken occasion to study the long line of decisions of the courts covering this situation?

Mr. LUDLOW. I have not. I am governed in my attitude very considerably by the judgment of business men who are my constituents and from whom I have submitted a long list of letters here. They are unanimously in favor of the bill and present what seems to me to be a very convincing reason why it should pass. I have put a statement to that effect in the record.

Mr. WINGO. I will ask you a practical question; not a legal question or banking question: You feel where a transaction has not increased the property of a failed institution that, notwithstanding that fact, the creditors should be permitted to come in and have a preference over the depositors?

Mr. LUDLOW. I feel these banks, acting just in the performance of a particular service in these cases, it has got to be differentiated from general banking——

Mr. WINGO. That is the very point I am getting at. You want to differentiate and make them a preferred creditor. You see what I am driving at, Mr. Ludlow? You want your constituent, a wholesale house, for example, to be a preferred creditor over and above the

depositors, even though the transaction has not added anything at all to the assets of the bank that has failed?

Mr. LUDLOW. Well, I do not see that that has much bearing on it. These bills of lading are sent on to the bank for collection, just for the performance of a service, like they might be sent to a lawyer's office. It is not strictly a banking service. It seems to me these local depositors, who are familiar, by their personal acquaintanceship with the officers of the bank, at least they are in a position to be familiar with them more than the outside customer—that they are in a different status from an outside business man.

Mr. WINGO. I am trying to get your viewpoint. As I understand, you would be willing, if we enact a law that will put it on the same footing as the illustration you used, that the same rule shall apply as applies if a draft and bill of lading were sent to a lawyer and he made the collection and misappropriated it; you would be willing for the same remedy to go against the bank, in favor of your constituents, who have argued in favor of this bill, that they would have if they sent them to a lawyer who made the collection and stuck the money in his pocket and went bankrupt? Are you willing to have the same rule apply?

Mr. LUDLOW. I do not know that it is comparable.

Mr. WINGO. I want to know if you will be satisfied if we amend the law so that will be the rule; a rule similar to that covering the creditor against that failing lawyer. Would you be willing to have that same rule apply to the failing bank?

Mr. LUDLOW. I do not think when a business man sends a bill of lading to another city to be collected and, in a few minutes' transaction in that bank, it gets caught in a trap like this it should be penalized by being put in with the general line of creditors.

Mr. WINGO. You feel like penalizing the poor depositors who get caught in the trap and that the wholesaler in Indianapolis takes precedence? Remember, I have no feeling against them, because the best client I have ever had in my life is riding me about Jim Strong's bill. He wants to be preferred, but the point I am getting at is this: How can you distinguish between the poor depositor and the business man who gets caught in a trap?

Mr. LUDLOW. I ask you if you do not see any distinction at all. You live next door to the bank and see the president and know him and know whether he gambles in stocks or not and you are in a position better to judge of the dependability of that bank than a man 3,000 miles away.

Mr. WINGO. Oh, the banker that is forwarding the draft keeps better track of that banker than the depositors in the same town.

Mr. SEIBERLING. I should like to differentiate the case for you. The depositor, when he puts his money in a bank, in a sense makes a loan to a bank; but a manufacturer, who draws a draft with the bill of lading attached and sends a carload of merchandise into the northwest, does not know who is going to collect his draft. He does not make the bank a loan of the money; he does not deposit it. The bank is merely the agent, the trustee, to release his merchandise and accept a fee, and when the bank releases the property of the manufacturer, as the agent of the manufacturer, that bank is bound to remit to the manufacturer the money it receives from the consignee and I can not see where the general creditors of the bank are interested in that proposition at all.

Mr. LETTS. Then you would think that one who has a right growing out of a contract of agency has a right that is superior to the moral responsibility which arises when a person with a few dollars comes in and leaves it there for safe-keeping?

Mr. SEIBERLING. It is an entirely different transaction and the motive is entirely different, from the case where I send out a check—where I send out to an agent to deliver merchandise. Assume a store sends out a fur coat to be delivered to a customer and to receive the cash: It gets the cash, and the individual makes an assignment for the benefit of the creditors on the way to the bank. Do you think the general creditors should get that money?

Mr. WINGO. Are you willing to have that rule applied here?

Mr. LETTS. Change the facts in the case a little and let him bring back a check instead of the cash and say there is a transfer of credit on the books of the bank and the assets of the bank are not increased.

Mr. SEIBERLING. It was not his business; he was merely the agent.

Mr. WINGO. Are you in favor of making him a preferred creditor if he had not collected the cash, but got nothing but a book credit and had added nothing to the assets? In other words, without a passing of anything of value and without augmenting the assets, are you still willing to make him a preferred creditor?

Mr. SEIBERLING. When the banker becomes the customer's agent and releases the bill of lading to him, that releases the general creditor from the liability to the extent of that check, if it is charged up.

Mr. WINGO. I beg your pardon.

Mr. SEIBERLING. It reduces the liability of the bank.

Mr. WINGO. The courts have held time and time again there is no reduction of liability; there is a transfer of liability from one man to another.

Mr. DUNBAR. Do you think the bill is unconstitutional?

Mr. WINGO. I think it is unconscionable.

Mr. DUNBAR. Why do you quote the courts?

Mr. WINGO. That is what you are trying to do. You are trying to overrule and repeal a law of interpretation.

Mr. DUNBAR. Then, this bill is unconstitutional?

Mr. WINGO. I say it is unconscionable.

Mr. DUNBAR. I want to put it on the question of law. They want to change the law, and if this bill is unconstitutional, then it would be unlawful.

Mr. WINGO. No; we would make it the law. The law is just what Mr. Sieberling stated in reference to the agent in connection with the fur coat. The owner of the fur coat is a preferred creditor under every decision of the courts at the present time, and if you go and pay that cash into a national bank, under every decision of a court, that man who sent that coat absolutely is a preferred creditor, provided you can trace that cash and it has not been dissipated and used by the bank to the extent you can not trace the assets.

Mr. STRONG. Do you not think we had better hear the evidence first?

Mr. DUNBAR. I just wanted to ask a question or two.

Mr. STRONG. All right.

Mr. DUNBAR. In the Liberty loan operations during the war, a bank would take a subscription and receive $100,000 cash. Suppose, at the end of the day, it remitted to the Treasury Department with

a draft on a New York bank and before that draft was received by the Treasury Department, that bank failed: Who would be the loser?

Mr. WINGO. It would be a preferred claim against the bank in that case.

Mr. DUNBAR. It would be a preferred claim for the Government, but not be a preferred claim for a farmer who shipped a carload of corn?

Mr. WINGO. A farmer, under the same circumstances, would have a preferred claim. But you want to go further and give him a preference when there were no assets transferred or received.

Mr. STRONG. I suggest we hear the evidence.

Mr. WINGO. Remember, I did not provoke this controversy. It was a brick thrown at me.

Mr. STRONG. There are several Congressmen here who want to make statements.

Mr. Hope, the committee will be glad to hear from you.

STATEMENT OF HON. CLIFFORD R. HOPE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KANSAS

Mr. HOPE. Mr. Chairman and members of the committee, I represent a district which has a very large milling industry, and my attention has been called to this bill by a number of the mills in my district who have had some unfortunate experiences heretofore in collecting drafts which were sent with bills of lading on shipments of flour and grain to other States.

I think I can briefly give you the contention of these millers as they have expressed it in their letters to me by reading a short extract from a letter which I received from the Dodge City Flour Mills, of Dodge City, Kans.

> We, as well as all other shippers of carload commodities in interstate commerce, are very much interested in the adoption of this bill. Because of the heavy flour and grain production in our State which largely moves in interstate commerce, this bill will mean a lot to the business interests of Kansas.
>
> In years gone by, we as well as others, have stood heavy losses in other States by reason of the fact that when a bank failed during the process of collection of one of our drafts we were forced to accept the same payments as all other creditors when, as a matter of fact, our item was merely a collection item and should never have been commingled with the business of the bank. It did not belong to the bank in any way; they were merely acting as a collecting agent.
>
> Experience has taught us that in taking matters of this kind to court, in some States we were successful in having the item declared a preferred claim, but in most States this was not upheld.

I have some five or six other letters, all of them along the same line and if I may, I should like to have the record show the names of the milling companies who have written me these letters without burdening the record with any further extracts from them.

Mr. WINGO. In that connection, I do not think we ought to put the letters in, because every member of Congress has been flooded with them; but it would be all right to select the names and insert the names.

Mr. STRONG. Leave the letters here and the reporter will insert the names in the record.

Mr. BRAND. Insert the names and addresses of the firms.

Mr. STRONG. Who wrote that letter?

Mr. HOPE. The Dodge City Flour Mills of Dodge City, Kans.

(The names and addresses of the firms referred to are printed in full as follows:)

The Dodge City Flour Mills, Dodge City, Kans.
The William Kelly Milling Co., Hutchinson, Kans.
Walnut Creek Milling Co., Great Bend, Kans.
The Larabee Flour Mills Co., Kansas City, Mo.
The Claflin Flour Mills, Claflin, Kans.
The Arnold Milling Co., Sterling, Kans.
The Light Grain & Milling Co., Liberal, Kans.
The Farmers' Cooperative Grain Dealers Association of Kansas, Hutchinson, Kans.

Mr. HOPE. I think that is all the time I care to take. I am in agreement with the statement which has just been made by Mr. Ludlow to the committee. I think the position of the transferor of the draft in a case of this kind is on an entirely different basis from that of a depositor of a bank. In this case the bank is merely performing a service for the transferor for which it is paid. It is not a part of the bank's business except incidentally. The rule of law now in effect in most States is a very great burden upon business institutions which do an interstate business and who must depend for the collection of their drafts upon banks in other States, in some case thousands of miles away, where they know nothing of their standing except as they can learn it from a commercial rating agency or from their local bank. I think the legislation proposed would greatly facilitate transactions of the character I have described.

Mr. STEAGALL. Whom do you represent?

Mr. HOPE. I am merely representing some of my constituents, who are millers.

Mr. STEAGALL. You are just presenting these letters and petitions?

Mr. HOPE. Yes, sir.

Mr. WINGO. You said the banks were paid for this service?

Mr. HOPE. Yes; for this collection service.

Mr. WINGO. Do your letters say, in each instance, they pay for it?

Mr. HOPE. I do not know that all say that. Some do.

Mr. WINGO. Are you familiar with the methods your constituents use in sending these drafts and bills of lading out? Do they deposit them in their local bank and have that local bank forward them?

Mr. HOPE. I take it in most instances they do not. One letter says not.

Mr. WINGO. Do they state why they do not follow the customary course of turning them over to the bank and sending them through the par clearance system?

Mr. HOPE. I do not think they do.

Mr. WINGO. Would it surprise you to know that most of that business in Indiana goes through the banks and is cleared at par through the Federal reserve banks and the banks that remit do not even get postage?

Mr. HOPE. I do not know the practice in Indiana. I have the statement of the gentlemen who have written me and it is to the effect that the service is paid for.

Mr. WINGO. What city is that?

Mr. HOPE. This statement is in a letter from a mill at Claflin, Kans.

Mr. WINGO. I should have said Kansas. I did not mean Indiana.

Mr. HOPE (reading):

> We see no reason why when drafts are sent for collection only and are not passed through our local bank and their correspondents at all and we pay the

collecting banks their fee for collecting the item, why this should be considered as a deposit and we have to take our chances with the regular depositor.

Mr. WINGO. If they are not willing to trust their customer and ship on open account and are not willing to trust the local bank or willing to trust the Federal reserve and, on account of that distrust, are afraid to take that free service, but send it through an insolvent bank, you want the depositors in that insolvent bank to lose and your constituent, who has selected that bank with his eyes open, as his agent, to have preference?

Mr. STRONG. Your question is rather leading.

Mr. WINGO. It is leading. I was trying to summarize his conclusions.

Mr. HOPE. I do not agree with the gentleman's conclusions as to the reasons why the milling companies follow the practice which they do in making their collections.

Mr. WINGO. You assume they send it direct. There is a bank in that town, is there not?

Mr. HOPE. I presume so.

Mr. WINGO. Do you not know, my dear sir?

Mr. HOPE. Yes, sir; in most towns there are banks. I assume there is.

Mr. WINGO. Now, there is a bank there?

Mr. HOPE. Yes.

Mr. WINGO. Now, assume, instead of sending that draft through his local bank, down to the other end of your district, to some bank down there, let us assume that he sends it direct to a bank in a country town in your district and that country bank fails after the receipt of the draft and before they send the remittance, but after they have transferred the item from the account of a depositor. Now, in that case, can you explain why your constituent, who foregoes the free service of his own bank, and which he could have gotten by sending it through that bank to the Federal reserve bank——

Mr. HOPE. I do not know why he does it. I assume there is some good business reason for it. They did not tell me.

Mr. WINGO. You have not investigated that?

Mr. HOPE. No, sir.

Mr. STEAGALL. You say you want this done. You are merely representing your constituents who sent these letters?

Mr. HOPE. Yes, sir. I might add to that, that my constituents have convinced me of the merit of the proposal.

Mr. STEAGALL. Then you do want it done?

Mr. HOPE. Yes.

Mr. SEIBERLING. In all these cases the bank has no authority to deliver the bill of lading to anybody unless it gets payment of the draft?

Mr. HOPE. Oh, no.

Mr. SEIBERLING. Well, it seems to me it is not a question of depositors or stockholders of the bank, but it is a question of the agent or trustee following the contract, and before he delivers the merchandise belonging to the consignor, to get payment for his draft?

Mr. HOPE. I think so.

Mr. SEIBERLING. And if he gets payment for his draft, why should he not be a preferred creditor, because the bank is only an agent in the matter?

Mr. WINGO. Would it surprise you if the bank did get the money; he would be held a preferred creditor under the law?

Mr. HOPE. I am not familiar with the decisions on that.

Mr. WINGO. You said you had gone into the matter and were convinced of the merits of the proposal. I ask if it would surprise you, under the conditions he mentions, and where payment had been made, that he has been held to be a preferred creditor?

Mr. HOPE. I assume there would be a difference, where you could actually trace the funds through the bank. I think there would be a difference there.

Mr. SEIBERLING. He has no right to release the bill of lading until he gets payment. That is the contract.

Mr. STRONG. And they do not do it.

Mr. SEIBERLING. The bank would have no right to do otherwise.

Mr. HOPE. I do not think they do it in the ordinary case.

STATEMENT OF HON. WILLIS G. SEARS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Mr. SEARS. Mr. Chairman and gentlemen of the committee, I do not know that I can give you any light on this matter. You are a committee of experts, and my relations with banking have been along one special line that did not give me any special insight into general banking—simply attending meetings at the bank on notice, given about every three months and two or three days ahead.

But it would seem to me that by the use of the rubber stamp, a bank could always maintain the relation of agency, that would come along to every succeeding indorsee, and have no relation of creditor with the bank at all until the money is actually received back at the original, first bank. If that is true, I can not see why we would need a law of this kind.

Mr. STRONG. Can not see what?

Mr. SEARS. I can not see the use of a law of this kind if that is true.

Mr. STRONG. It is not true with the national banks.

Mr. WINGO. I beg your pardon. Show me a single decision, with the state of facts as given by Mr. Sears, where the courts have not held them as preferred creditors.

Mr. SEARS. If they are creditors, they are creditors, and there must be some special reason for making them preferred creditors. If they want to do business with a bank, which a man can do by becoming a depositor a day or so before a bank fails—the bank is good at the time he puts his money in it—but the bank fails the next day for good cause, then, he is an ordinary creditor. I did not know of any difference between national and State banks, but I would think that the bank could fix its relation with respect to the bill of lading and the draft, and could so establish that relation that it would hold as to all succeeding indorsees. If that is true, no matter what bank fails, the original bank that handled the bill of lading in the first instance, it seems to me, would go ahead and pick up and trace the property and discharge agents wherever they wanted to and appoint others to take its place, and when the bill of lading is collected and discharged and delivered, all the money would belong to the original man who drew the bill originally. If that is true, there is a relation that can be fixed at once and immediately by the banks and

I would think that would make this bill unnecessary, if they wanted to do that. That is the only thought I had. I do not know whether it may be of any value or not.

Mr. BRAND. May I ask a question, Mr. Chairman?

Mr. STRONG. Yes.

Mr. BRAND. If this bill should become a law, would the law in your judgment, give this class of creditors preference over the ordinary creditors?

Mr. SEARS. I think the word "creditor" there is probably used in a sense that would have to be given an added meaning. I think the law would amount, ultimately, to what I said the rubber stamp would amount to. If that creditor is to be a preferred creditor, it evidently seeks to segregate him out from the regular creditors of the bank, because of some trust relation.

Mr. BRAND. The bill refers to him as a preferred creditor.

Mr. SEARS. Yes.

Mr. BRAND. I ask you, as a matter of law, if, in your judgment, that would make him a preferred creditor over all other creditors?

Mr. SEARS. I am inclined to think that that would be good law if it was passed.

Mr. BRAND. Take a State, for instance, whose laws provide that, after the payment of the expenses of the administration of an insolvent bank, depositors shall be preferred over all other creditors, if this bill should become a law, would this bill give these people preference over the depositors in such states which have given them, by law, preference?

Mr. SEARS. The ordinary depositors?

Mr. BRAND. Yes.

Mr. SEARS. I think it would.

Mr. BRAND. In other words, would this Federal law displace the class that the depositors are placed in under the law of such a State?

Mr. SEARS. I think wherever this would be binding and operating, it would displace the laws of the States.

Mr. BRAND. The State of Georgia, for instance, has put the depositors first in a class in the payment of dividends to creditors after payment of the expenses of the administration of an insolvent bank.

Mr. SEARS. Your State law would have to defer to the national law where it operates.

Mr. BRAND. In a State bank?

Mr. SEARS. It is a question whether it operates there or not.

Mr. BRAND. If a State bank in a State which gives the depositors preference, is a member of the Federal Reserve System, it might operate upon that bank.

Mr. SEARS. I would not think that the relationship is changed by by membership in the Federal Reserve system. I do not think that would make any difference.

Mr. BRAND. Then it is your judgment, as I understand, that in a State like Georgia this Federal law of course following the rule of law over the country, would repeal the particular law in that State?

Mr. SEARS. No; except as to national banks.

Mr. BRAND. In a national bank, yes.

Mr. SEARS. Oh, yes. Where it operates, it would operate 100 per cent or it would not operate at all. The State laws must defer to the national laws.

Mr. STEAGALL. There is not much danger of a State bank getting into the national system where that law obtains.

Mr. BRAND. I know of one State where the State member banks, members of the Federal Reserve system, under the law of this State has distinctly placed the depositors in a preferred clas.s

Mr. STEAGALL. What State is that?

Mr. BRAND. The State of Georgia.

Mr. STEAGALL. The law was passed subsequent to the admission of banks in that State to the Federal reserve system?

Mr. BRAND. Not all of them.

Mr. STRONG. Let us keep the argument between ourselves. Have you anything further?

Mr. SEARS. No, sir.

Mr. SEIBERLING. At the moment that a cashier of a bank delivers a bill of lading or transfers the property of another party and accepts the check of his customer in payment for it, he would certainly have knowledge that the bank was about to fail, would he not?

Mr. SEARS. I would think so. He ought to.

Mr. SEIBERLING. And with that knowledge, he would have no right to take a customer's check in payment of that draft.

Mr. SEARS. I think the State courts of Nebraska have so held.

Mr. SEIBERLING. If the cashier, with knowledge that the bank is about to fail—with that knowledge—releases the consignor's merchandise and accepts a check after he knows he will not be able to remit to the consignor—accepts a check from the consignee, knowing he can not remit to the consignor—as a matter of justice, do you not think that the bank, if anybody must lose, should be the loser including the depositors and stockholders?

Mr. SEARS. They are the guarantors of the acts of their officers.

Mr. SEIBERLING. The consignor, who lives many miles away, has no knowledge of that transaction. They have employed that man to run the bank and he, with knowledge that he can not remit, releases the consignor's merchandise. Do you not think that the consignor, in those circumstances, should be a preferred creditor against the bank?

Mr. SEARS. Yes.

Mr. LETTS. Do you think he should have a preferred claim against the citizen who comes in and deposits $20, coincidentally with the transaction?

Mr. SEIBERLING. I think so, because the citizen is, in effect, loaning his money to the bank, while the drawing of the draft is an entirely different transaction.

Mr. SEARS. It is really the same transaction when some one comes in and relies on the——

Mr. LETTS. You are putting your question on the culpable action of the cashier in turning over the property and receiving the check. Well, he is just as culpable in receiving the deposits.

Mr. SEIBERLING. But I differentiate between the two transactions. One is really a loan.

Mr. LETTS. You are bringing in a new element now, as to the good faith of the cashier in his action.

Mr. SEIBERLING. Yes.

Mr. LETTS. And he is just as culpable in that respect when he takes a deposit over the counter, in my judgment, as he is in turning over the property of the consignor.

Mr. STRONG. Let us leave the debate until we get the evidence in.

Mrs. PRATT. It seems to me this is a matter of common justice and common sense. Do you not feel that the people who deposit in a bank are rendering a service to the bank and the bank renders a service to them—that it is a mutual thing?

Mr. SEARS. Oh, yes.

Mrs. PRATT. They have a real claim against that bank. Some one in a remote town uses that bank for a temporary service to himself. If he feels no obligation to look into the matter as to whether he is a creditable agent, should he be entirely free, if trouble comes, because he did not take the trouble to examine the agent he uses? Why should he have preference over people between whom there is a mutual service in the banks?

Mr. SEARS. Every one has confidence in the banks until there is reason for the contrary.

Mrs. PRATT. Will not these people simply flood these banks, without the slightest question as to whether they are solvent or not, with their business which they are getting free?

Mr. SEARS. The natural tendency of banks is to trust people, the same as others and the tendency is for outsiders always to believe that a bank is sound and solvent until they know to the contrary.

Mrs. PRATT. Naturally the depositors feel the same way. It seems to me these people should take their medicine with the depositors.

Mr. FENN. Judge Sears, I wanted to ask just one question. In the case cited by Brother Seiberling, where the cashier knows it is going to fail yet accepts a bill of lading and draft, why does not that same thing apply to the ordinary depositor, which often happens, when the cashier and officials of the bank knew it was obliged to go into the hands of a receiver, received deposits after that knowledge was in the bank? Why should a distinction be made between the ordinary depositor and the bill-of-lading man?

Mr. SEARS. I think they often have been placed in the position that this bill intends to place them in—preferred creditors; that is, they have gotten their money back first.

Mr. FENN. Before the ordinary depositors?

Mr. SEARS. Where the bank has received deposits after knowing it was insolvent.

Mr. FENN. That has clarified this matter considerably, Judge. I thank you.

STATEMENT OF HON. DAVID HOPKINS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

Mr. HOPKINS. Mr. Chairman, we have one of the largest milling interests in the west. I think we have about the ninth largest center.

I am not here this morning to try to discuss with you the technicalities of this law at all, but I have discussed this with a number of our millers out there, and I have a letter which I received in the last few days, from the president of the Grain Belt Mills Co., one of the largest

mills we have operating there, and he brought out some points and some arguments here that I feel this committee should consider.

Whether or not the present law covers it, as intimated by one or two members and one of the witnesses, I do not know. If it does, all right, but seemingly it does not, because these mills are constantly running up against this proposition. If it does not cover it, and the case is just as it seems to me it is, a bill should be passed to cover it. If this bill covers it, all right.

These millers point out—and I judge they have very good reason for using the methods they have, as most millers use it in sending out their bills of lading to the banks in the middle west where these milled products are marketed—when they send out the bills of lading and they are discharged by the bank, the bank receives a fee. If the mills could send, as the Honorable Mr. Wingo has suggested, these bills of lading and have them collected free, I do not see why they do not do it. Evidently they must have some good reason for not doing so, because the larger millers all use this same method. They are delivering goods into that community and rendering a service, and they have received, or the banks have received, goods in return. It may have been simply a transfer of an account from one depositor to the credit of this milling firm, yet they have received it, and it is the duty of the bank at once to send that to the milling company.

The practice of the banks, however, is to keep those remittances for some length of time; and if they did not do that, there would be little need for this law. But they keep them for days and days; and if the bank fails, the milling company has to take its chances along with the other depositors.

It seems to me these milling companies in a different city, not getting the same type of service that the ordinary depositor gets, but paying for the services he gets, with the bank receiving it with the [illegible] right of turning it down if they do not want it, should receive that protection. It is not in the nature of a deposit. A person in the town comes to a bank with full knowledge of the character of the bank and makes his deposits. Sometimes he receives something back.

The milling company pays a fee for certain services, and it seems to me as right to consider the money they have there, due them as the result of that collection, as a trust or the money should be held in trust by the bank and they should be considered preferred creditors.

I do not pretend to attempt to discuss the technicalities of this bill, because I have not gone into it thoroughly, but this is a proposition and situation that should be remedied.

I should like to insert this letter in the record, because I believe it gives some arguments and points the committee should have. This is from the Grain Belt Mills Co., of St. Joseph, Mo.

This bill seems to be designed to correct a situation which has been a most serious handicap to business in connection with shipments made subject to payment of draft on arrival of cars. In many cases the drafts are paid but the funds are not always promptly remitted and it has happened frequently that before funds are remitted and cleared the collection bank fails and such funds are then involved in the failure and subject to whatever the State laws are, and some of them provide that these funds will be treated just like bank deposits and the drawer sometimes loses all or part of the proceeds. It is never intended that these funds be a deposit of the bank, but in all cases the bank merely acts as an agent for the collection of the draft and after they have performed the service funds are to be remitted.

Mr. WINGO. You cited some St. Joseph people in Missouri. You said you did not know why they did not use the par clearance system of the Federal Reserve banks. Would it interest you to know in one instance the reason why they do not do it is that when they turn it over to the local bank, sometimes in order to get a fee on it, the local member bank does not take advantage of the par clearance system but sends it direct to a bank in the town which is the destination of the shipment and thereby collects a fee and at the same time tells the miller that he had to pay the remitting bank a par clearance. In one instance the shipper paid $1.88 to one of the banks plus 25——

Mr. HOPKINS. In St. Joseph?

Mr. WINGO. No, I am using a hypothetical case. I am asking you if you investigated enought to know that. I was going to tell you in one instance that was the reason. After that time, they said, "We will save this; instead of using our local bank," which does not advise them that they can send it through the Federal reserve and simply charge interest on the time of the float, they say, "We will save that by sending it direct to this bank in the town of the consignee and only pay him a small fee and thereby save some money."

Mr. HOPKINS. That is interesting. I do not think you will find a bank of the type we have in St. Joseph would attempt to fool their customers or proceed in that way. These are not small business concerns. They usually follow the best practice. If you feel there should be some kind of law that would prevent a bank from deceiving a customer of that kind, I do not know whether that would meet the situation or not.

Mr. WINGO. It is not a deceit.

Mr. HOPKINS. I thought you meant it that way.

Mr. WINGO. A bank is in business to make money. If a person comes and selects them as agent and does not direct them as to the way of exercising the agency, it is not deceit for them to exercise it in a way that will be profitable to them. That is the reason they are in business. Some banks feel that the par clearance system is an impcsition on them. I would not think a bank was deceitful if it undertook to collect for its services.

Mr. LETTS. I am not sure that I understood the trend of your remarks, but in speaking of what you say is a custom that when drafts are collected the money is held in the bank for days at a time—a thing which is surprising to me, if true—but assuming that it is, then you are talking about the case where the bank has presented the draft and it has been accepted and has received the cash or received a check which has gone through the clearing house and the money has come into the bank, augmenting the funds at that bank. Of course you are familiar with the fact that, under such circumstances, there is a preference?

Mr. HOPKINS. I meant to include in there where the check is on the same bank, where it does not increase their assets. I understand at the present time—at least from statements made here—if they do augment their cash from the clearing house, it does create a preferred credit.

Mr. LETTS. But this bill would give a preference where a check is presented on the same bank and there is simply a little bookkeeping indulged in which transfers credits.

Mr. STRONG. The little bookkeeping consists of charging one man and crediting another with the check. They have the funds in hand.

Mr. LETTS. But they have not increased the funds of the bank in any way. They have not augmented the assets of the bank in any way. They have simply received a check which is entered on the books.

Mr. STRONG. But it has decreased the amount of their deposits.

Mr. LETTS. They have charged one and credited the other; they have not augmented the funds of the bank.

Mr. HOPKINS. From the standpoint of the milling people I can not see any moral difference whether they received the money from another bank or were relieved of an obligation to one of the depositors in their own bank.

Mr. LETTS. How does it happen that the millers are the ones concerned in this matter? Why does it affect them more than any other industry?

Mr. HOPKINS. I do not know that I can answer that thoroughly except the milling industry is built up on that type of business. Mr. Wingo asked——

Mr. LETTS. A lot of business is done that way.

Mr. HOPKINS. I do not think other things are shipped as much on bills of lading as milling goods. Possibly there are other things. There is very much of that business in the agricultural districts.

Mr. LETTS. Automobiles and automobile accessories develop a large volume of business that is handled that way. I have not heard myself nor anybody else intimate that anybody else is interested in this except millers, except perhaps a few wholesale grocers. I think perhaps they are interested.

Mr. STRONG. Here is something from one of your Iowa banks, Judge Letts [handing letter to Mr. Letts].

STATEMENT OF HON. FRED S. PURNELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Mr. PURNELL. Mr. Chairman, ladies and gentlemen of the committee: To be frank with you, I have not had an opportunity to give this matter a great deal of consideration, but I should like to be recorded as favorable to this bill, and I base that request very largely upon my faith in the judgment of the folks out in my country who have written me about it.

I think I discern between letters of propaganda and those which come in more or less voluntarily, and in response to Judge Letts's suggestion a moment ago that only millers are interested in this legislation, I should like to call your attention to the fact that the Continental Steel Corporation, of Kokomo, Ind., in my district; the Farmers Grain Dealers Association of Indiana; the Turner Manufacturing Co., of Kokomo, Ind.; the Umphrey Manufacturing Co., of Crawfordsville, Ind.; and the Kokomo Automotive Manufacturing Co., of Kokomo, Ind., have written me letters which are certainly not propaganda. Also I have received letters from the following: Mid-States Steel & Wire Co., of Crawfordsville, Ind.; the Davis Industries (Inc.), of Kokomo, Ind.; W. M. Shofor & Co., of Frankfort, Ind.; E. C. Atkins & Co., of Indianapolis, Ind.; the Oakes Manufacturing Co., of Tipton, Ind.; the Indiana Brass Co., of Frankfort, Ind.; and the Milner Provision Co., of Frankfort, Ind.

There are others that I do not have in the file with me.

That is all the statement I care to make, Mr. Chairman and gentlemen of the committee. I did want to pass to the committee, for its consideration, the judgment of people in my district engaged in various manufacturing pursuits who believe that this would be a helpful piece of legislation to them.

Mr. STRONG. I have here a list of gentlemen who desire to be heard. The first is Mr. Hogueland, attorney for the Southwestern Millers League. Mr. Letts asks what is the opposition to the bill. We have a representative of the comptroller's office who is opposing the bill.

Mr. WINGO. I think we should pursue the ordinary course and let the proponents make out their case.

Mr. STRONG. Very well; we will hear Mr. Hogueland.

STATEMENT OF MR. E. H. HOGUELAND, OF KANSAS CITY, MO., ATTORNEY FOR THE SOUTHWESTERN MILLERS LEAGUE

Mr. HOGUELAND. I am appearing on behalf of the Southwestern Millers League, which is an organization of flour millers of six southwestern States—Kansas, Nebraska, Colorado, Oklahoma, Texas, and western Missouri.

In the handling of our commodities, flour and grain products, we find generally it is most convenient to sell on the arrival-draft basis. There is some business done on the sight-draft basis, but relatively little by the flour mills. More grain men do business on the sight-draft basis than the millers. There is a little done on the so-called acceptance-draft basis, but in the main it is on the arrival-draft basis.

When a car of products is sold, the mill makes out a draft and to that draft attaches a bill of lading with instructions to the bank to collect and remit. Now, the general practice is to deposit those drafts with the bill of lading attached in the bank with which we do business at our local bank. For instance, at Kansas City, the Kansas City Millers would deposit their drafts with the Kansas City banks and they would be routed by those banks for collection.

For many years it has been our practice to indorse on these drafts a notation something like this:

Notice to collecting bank:

This draft is placed for collection only, and is not to be treated as a deposit. The funds obtained through its collection are to be accounted for to us as a trust and are not to be commingled with the other funds of collecting bank.

The question has been raised this morning whether the millers pay a fee. My information is that, generally speaking, we do pay a fee, and that fee is approximately one-tenth of 1 per cent of the amount collected, or $1 per thousand, plus certain expenses such as postage or other items that the collecting bank may attach. However, that rule is not an infallible one. In many localities, particularly in the Southwest, the charges are higher, and even in Indiana we have had recent complaints that charges were as high as $4 or $5 for collecting items. There seems to be no uniform rule among the banks.

Mr. STRONG. That charge was per thousand?

Mr. HOGUELAND. Yes; or for $1,500—I have forgotten what the amount was.

I would like to submit as an exhibit a statement showing some representative losses, and, while it does not purport to be complete, it indicates the amounts involved in some of these cases. It further indicates as to the cases cited whether or not the accounts are recognized as preferred, the amount paid, and the losses sustained. In certain cases I was unable to give the total of losses sustained, because final adjudication of the bank's affairs had not been made.

(The statement referred to is reproduced below.)

Representative losses sustained by members of the Southwestern Millers' League on account of failures of national banks

Mill drawing draft, with address	Name of insolvent bank with address	Amount of claim	Preferred	Amount paid	Loss
Ardmore Milling Co., Ardmore, Okla.	First National Bank, Soper, Okla.	$847.62	No.	$65.26	$782.36
Do	First National Bank, Colgate, Okla.	765.25	No.	38.32	726.93
Do	First National Bank, Idabel, Okla.	878.93	No.	246.09	632.84
O. A. Cooper Co., Humboldt, Neb.	First National Bank, Richland Center, Wis.	835.36	No.	501.75	333.61
Wm. Kelly Milling Co., Hutchinson, Kans.	First National Bank, Bixby, Okla.	784.85	[1] $500.00	500.00	(2)
Lexington Mill & E. Co., Lexington, Neb.	City National Bank, Kearney, Nebr.	368.48	No.	92.68	275.80
Willis Norton Co., Topeka, Kans.	First National Bank, El Dorado Springs, Mo.	712.25	No.	.....	(2)
Ponca City Milling Co., Ponca City, Okla.	First National Bank, Bristow, Okla.	922.00	No.	322.[illegible]	(2)
Ross Milling Co., Ottawa, Kans.	New First National Bank, Springfield, Mo.	2,178.30	No.	435.66	(2)
Shellabarger M. & E. Co., Salina, Kans.	Dothan National Bank, Dothan, Ala.	372.22	No.	.....	(2)

[1] Preferred account being paid by check on another bank.
[2] Final payments have not been made; impossible to give final loss.

Mr. HOGUELAND. In many of the States, the courts have been holding in recent years that accounts or items that are sent for collection are of a preferred character. I realize that there is a great diversity of opinion among the State courts. In the early days, the great preponderance of the decisions was against our contention, but I think that in more recent years the greater number of State courts have held with us, but there are still a number of the State courts that hold that items sent for collection or remittance are not preferred items.

Mr. BRAND. Will you furnish a list of the cases in the different States which hold that they are preferred?

Mr. HOGUELAND. I have both, and I will give you the cases on both sides.

Mr. SEIBERLING. Even though you have that endorsement that you just referred to, the States hold against you, do they?

Mr. HOGUELAND. So far as I know, they have. That question is not determinable from the decisions themselves.

Mr. WINGO. Is that the sole form that is used, the one that you read?

Mr. HOGUELAND. No, it is not. It is in substance the general form, but it has to be changed because of the character of the draft.

Mr. WINGO. I suggest that you furnish us all of the forms that are attached to the drafts in these cases. I happen to know that that is not the form that was used in one case in Arkansas.

Mr. HOGUELAND. I will be glad to furnish the different general types, but I found in my experience that different matters will have a little different phraseology. We have tried to get them to use a common form, but, like everything else, they do not do it.

Mr. WINGO. You recognize that the difference in the form might affect the decision of the courts?

Mr. HOGUELAND. Certainly; that is true.

Mr. WINGO. That is the reason why I want the different forms.

Mr. LETTS. However different the form might be, it could only be controlling as between the customer and the bank, and not as affecting the rights of a creditor or depositor.

Mr. WINGO. Some courts have held it does.

Mr. HOGUELAND. I will first take up the decisions of the State courts that are favorable to our contention, and I might say here that the two points of difference seem to be largely the question whether, by the handling of the transaction, the assets of the collecting bank were augmented in the first place and that the funds are traceable.

Mr. WINGO. Did you use the word "and," or "or"?

Mr. HOGUELAND. "Or." The strange thing is that on practically the same state of facts, you will find that one State court will find that the funds have been augmented and in another State court that they have not been augmented. The Federal decisions follow almost uniformly the decisions of those State courts that hold that the items are not preferred.

Mr. SEARS. May I just add a word, because I will have to go?

Mr. STRONG. I guess there is no objection.

Mr. SEARS. I have just read the bill, and my best thought is that if it were enacted into law it would not work injury or harm to anyone.

Mr. STRONG. Thank you.

Mr. BRAND. Mr. Hogueland, what is your residence?

Mr. HOGUELAND. Kansas City, Mo.

One of the cases which we look upon as leading, holding that the funds of the collecting bank had been agumented, even though the payee gave a check on that particular collecting bank and there was a mere transfer from one account to the other and a remittance made by the collecting bank and that the drawer of the draft in that State of facts would have a preferred claim, is Goodyear Tire & Rubber Co. *v.* Hanover State Bank of Kansas (204 Pacific, 992), where the Supreme Court of Kansas held:

> Where a bank holding a claim for collection receives in payment thereof a check upon itself drawn by the debtor against a sufficient deposit, there being enough cash on hand to meet it, charges the amount to him and attempts to remit it to the creditor by cashier's check, but passes into the control of a receiver before such cashier's check in due course of business is presented for payment, having at all times had cash on hand in excess of the amount thereof, the creditor is entitled to recover the amount of his claim from the assets of the receivership as a trust fund in preference to general creditors.

Now, there is a line of some probably 12 or 15 State cases holding in harmony with the decision of the Supreme Court of Kansas, and one of those cases is the Messenger case found in 187 Northwestern, 545, where the Supeeme Court of Iowa held:

> Where a seller sends its draft with a bill of lading attached to a bank, directing it to collect and remit and not to surrender the bill of lading, except on payment, and the bank did as directed, remitting by draft on another bank, the collecting bank was an agent of the seller, and title to the proceeds collected remained in the latter, and did not pass to the receiver of the bank.

And in discussing that case, the facts in which were much the same as in the Kansas case, the court went on to say:

> The method of collection was that the Swaney Co. (drawee) drew its check upon its own account in the collecting bank for the payment of the sight draft. It had an account of $4,500,000 against which it drew. Its check was charged against this account, and the amount thereof was put by the collecting bank into the form of Chicago exchange for the purpose of remittance. That this method was the full equivalent of the payment of money by the Swaney Co. and served to the augmentation of the assets of the bank in precisely the same manner as the delivery of currency would have done, is held in the following authorities:

Then the court cites various decisions from its own cases as well as from Arkansas, Illinois, New York, and Nebraska.

In the earlier cases in the State of Missouri, we find the State of Missouri deciding that these items were not of a preferred nature, but more recently in Missouri they have held with the courts in Kansas, and Iowa, and Nebraska, and in a recent case——

Mr. LETTS. Was that after the enactment of the statute?

Mr. HOGUELAND. Of the so-called bank collection code?

Mr. LETTS. Yes.

Mr. HOGUELAND. This was prior. The bank-collection code was passed last year.

Mr. LETTS. Was the Messenger case after the Iowa decision?

Mr. HOGUELAND. That was prior.

In discussing the Bank of Poplar Bluff the Millspaugh (281 S. W. 733), the Supreme Court of Missouri said:

> Bank accepting a draft drawn on it for collection is regarded as holding amount of draft as agent for sender, and on its insolvency the assets passing to commissioner of finance are regarded as increased by amount of draft, despite fact that funds remain commingled with other funds of bank, and may be recovered in full.

Then, one of the more recent cases is from the State of Montana, in the case of Hawaiian Pineapple Co. *v.* Browne (220 Pac., 1114), in which the court said:

> Where plaintiff forwarded draft for collection with instructions to bank to remit proceeds to a named bank, and draft was paid by drawee by check on bank of collection, by retaining the cash and remitting by cashier's check, its assets were augmented, and hence, if plaintiff could trace proceeds into bank's receiver's hands, he had preferential right thereto.
>
> It is likewise well established that a bank, receiving a draft for collection merely, is the agent of the remitter, drawer, or forwarding bank, and takes no title to the paper, or the proceeds, when collected, but holds same in trust for remitting.

And in discussing that case, the supreme court of Arkansas said, in State National Bank *v.* First National Bank (187 S. W. 673):

> The payment by the drawee of the draft of the amount thereof, by the delivery of its check therefor against his account in the collecting bank and the charging of the amount against his account, constituted to all intents and purposes a payment in cash of the drafts; the check being merely the vehicle of transfer of the cash. Certainly there is no necessity for the drawee of the drafts to take its check to its bank, the collector, and present it and receive the money, and hand it back to the bank in payment of the draft.

The supreme court of Florida, in a very recent case, reported in 124 Southern, 746, held practically the same way.

The Supreme Court of Nebraska, in State *v.* Bank of Commerce (85 N. W. 43), held:

> Money collected by a bank for another on notes or drafts, and retained, is held in trust for the owner, and does not become a part of the assets of the bank;

and if a bank thereafter becomes insolvent, and a receiver is appointed, the one for whom the collection is made is a preferred creditor.

A recent case is from the Supreme Court of New Mexico, Sinclair Refining Co. *v.* Tierney (270 Pac., 792), where the court said:

Funds received by a collecting bank, as agent for the sender of the collection item, are impressed with a trust in favor of the owner of the item collected, even though the item is collected by check drawn on it, or the item is a check drawn on collecting bank and is collected by charging against drawer's account.

I think perhaps one of the latest cases comes from the State of Oklahoma, the case of First State Bank of Bristow *v.* O'Bannon (266 Pac. 4721928), and in that case the supreme court carefully reviewed the decisions pro and con on this question, and then comes to this conclusion:

Where a bank accepts drafts for collection under the express conditions of "collection and remittance" and receives in payment of such drafts check drawn upon itself by drawee of the drafts, who has ample funds in deposit to pay his check and the bank has ample funds to pay the check, the transaction is the same as though the bank had actually received cash in payment of the draft. The assets of the bank being thus augmented the amount of such drafts in such sum as so collected is a trust fund and so a preferred claim.

In that decision the Supreme Court of Oklahoma cites decisions from 17 different States as upholding its view. Then, in conclusion, the Oklahoma Supreme Court points out this fact, that the decisions of the various States pro and con, as well as the Federal decisions, generally hold to the same theory, namely, that there is a relationship of principal and agent up to the time of collection, but that beyond that point the Federal courts and the State courts hold that a new relationship has been created, namely, that of creditor and debtor, and, in commenting on that, the court said:

All courts agree that in the beginning of such transactions the relation is that of principal and agent. Such being the case, we think the relationship should not be held to be transformed without consent of the principal. Very often such a principal may be willing to accept an agent for collection of a trust fund when he would not at all be willing to accept the relation of debtor and creditor.

Then the court cites the various cases that are referred to in this memorandum brief.

Mr. BRAND. May I ask a question there?

Has this question ever been passed upon by the Supreme Court of the United States?

Mr. HOGUELAND. Not directly, as I understand. In a case known as Larabee Flour Mills *v.* First National Bank of Henryetta, reported in 13 Federal Reporter, new series, an effort was made to appeal, and petitions were filed asking for a writ of certiorari, but that was denied by the Supreme Court. That is as near as it has gotten to the Supreme Court.

Mr. DUNBAR. In your experience among agriculturists and industrial establishments, have you found anybody opposed to this bill?

Mr. HOGUELAND. I have not. Of course, I probably would not, because my contacts are with the men who are handling their affairs in the same manner as millers are, but I know this, that the boards in Kansas City, Ohama, and Minneapolis, and the credit men's associations, and, I believe, the farm organizations of the country have indicated their willingness to support the bill, and I have also seen a resolution adopted by the Farmers' National Grain Corporation supporting the bill, and I understand that there are gentlemen here this morning who represent furniture interests and other interests who will appear in behalf of the bill.

My investigation indicates that there are at least 12 States that have ruled as the Kansas, Missouri, and Oklahoma supreme courts have ruled, namely, that these items are of a preferred character. Those courts are in the States of Arkansas, Florida, Illinois, Iowa, Kansas, Missouri, Montana, Nebraska, New Mexico, New York, Oklahoma, and Virginia.

After we got into this question, we discovered that the American Bankers Association had quietly promulgated what they called the Bank Collection Code. And they had secured the adoption of that bill in some nine States in the year 1929.

Mr. DUNBAR. Do you mean to say that the bankers are for this bill?

Mr. HOGUELAND. I am not sure they are; I think they have indicated their opinion. The bill does not go far enough to suit the bankers, as I understand, and I will point that out later.

I have as a second exhibit, which I would like to file with the committee, a list of the States which have already adopted the so-called Bank Collection Code.

(The list of States referred to is as follows:)

The Bank Collection Code recommended by the American Bankers' Association has been adopted in the following States. Reference is given to the provisions dealing with insolvency and preferences:

Indiana.—Paragraph 3 of section 13 of Bank Collection Code, being chapter 164 of acts of Indiana, 1929. Effective 1st day of July, 1929.

Kentucky.—House bill No. 277, passed by 1930 session.

Maryland.—Paragraph 3 of section 95, chapter 454, Bank Collection Code, Laws of Maryland, 1929. Effective June 1, 1929.

Missouri.—Paragraph 3 of section 11 of Bank Collection Code, pages 205, 208, 209. Approved June 6, 1929.

Nebraska.—Paragraph c of section 12 of chapter 41, Session Laws, 1929. Approved April 30, 1929.

New Mexico.—Paragraph 3 of section 13 of chapter 138, Laws of 1929. Approved March 12, 1929.

New Jersey.—Paragraph 3 of section 13 of chapter 270, Laws of 1929. Approved May 6, 1929. Effective immediately.

New York.—Paragraph 3, section 350–L, chapter 589, Laws of New York, 1929. Effective April 12, 1929.

South Carolina.—Section 2 of chapter 202, acts of South Carolina, 1927, approved April 26, 1927, provides that all items sent by one bank to another bank for collection are to be trust funds.

Washington.—Paragraph 3, section 13, chapter 203, Session Laws, 1929. Approved March 22, 1929.

Wisconsin.—Paragraph c, section 13, chapter 354, Laws of Wisconsin, 1929. Approved August 2, 1929. Effective on publication, which was August 3, 1929.

Mr. WINGO. Would it not be wise, right in this connection, to put into the record that code?

Mr. STRONG. I will say that Mr. Paton has filed a statement here that he asks go into the record, and attached to that is the code.

Mr. WINGO. Why not put the bank collection code in here now, because Judge Paton is not here, and when you put Judge Paton's letter in the record simply state there:

See testimony of Mr. Hogueland for the Bank Collection Code.

Then you will save duplication, but it ought to come here.

Mr. HOGUELAND. I ask permission to file copy of the bank collection code. Unfortunately, I have only the one copy.

Mr. STRONG. That may be done.
(The code referred to is reproduced below:)

BANK COLLECTION CODE RECOMMENDED BY THE AMERICAN BANKERS ASSOCIATION

(Draft prepared jointly by Thomas B. Paton and Thomas B. Paton, jr., general counsel and assistant general counsel, American Bankers Association, with explanatory notes, and designed for uniform enactment in all the States. Issued under the auspices of the committee on State legislation, American Bankers Association)

COMMITTEE ON STATE LEGISLATION FOR THE YEAR 1928–29

William S. Irish, president First National Bank, Brooklyn, N. Y., chairman.
W. A. Ackerman, vice-president Knox National Bank, Mount Vernon, Ohio.
Charles G. Allen, president Portland National Bank, Portland, Me.
Dale S. Flowers, cashier Gentry County Bank, Albany, Mo.
W. G. C. Bagley, vice president First National Bank, Mason City, Iowa.
Clyde Hendrix, president Tennessee Valley Bank, Decatur, Ala.
L. Albert Karel, president State bank of Kewaunee, Kewaunee, Wis.
Travis Oliver, president Central Savings Bank & Trust Co., Monroe, La.
George W. Reily, president Harrisburg Trust Co., Harrisburg, Pa.
A. N. Sicard, president First National Bank, Fort Smith, Ark.
J. H. Therrell, president Commercial Bank & Trust Co., Ocala, Fla.
H. N. Wilson, cashier First State Bank, Bokchito, Okla.

EX OFFICIO

Austin McLanahan, president Savings Bank of Baltimore, Baltimore Md.; chairman State legislation; savings bank division.
W. P. Gardner, vice president New Jersey Title Guarantee & Trust Co., Jersey City, N. J.; chairman State Legislation, Trust Co. division.
F. M. McWhirter, president Peoples State Bank, Indianapolis, Ind.; chairman State legislation, State bank division.
R. E. Harding, vice president Fort Worth National Bank, Fort Worth, Tex.; chairman State legislation, national bank division.

STATE LEGISLATIVE COUNCIL FOR THE YEAR 1928–29

William S. Irish, president First National Bank, Brooklyn, N. Y., chairman.
State chairmen of the State legislative council are as follows:
Alabama.—Clyde Hendrix, president Tennessee Valley Bank, Decatur.
Arizona.—A. T. Esgate, vice president and secretary The Valley Bank, Phoenix.
Arkansas.—A. N. Sicard, president First National Bank, Fort Smith.
California.—J. E. Huntoon, vice-president Bank of Italy National Trust & Savings Association, Sacramento.
Colorado.—Roy Cox, president Trinidad National Bank, Trinidad.
Connecticut.—William P. Calder, president Bristol National Bank, Bristol.
Delaware.—Henry Ridgley, president Farmers Bank, Dover.
Florida.—J. H. Therrell, president Commercial Bank & Trust Co., Ocala.
Georgia.—C. Holmes Sheldon, vice president National Bank of Brunswick.
Idaho.—A. V. Chamberlin, vice president American Trust Co., Coeur d'Alene.
Illinois.—Addison Corneau, vice-president Springfield Marine Bank, Springfield.
Indiana.—Gus H. Mueller, vice-president Fletcher American National Bank, Indianapolis.
Iowa.—W. G. C. Bagley, vice president First National Bank, Mason City.
Kansas.—C. W. McKeen, president National Bank of Topeka, Topeka.
Kentucky.—J. C. Utterback, president City National Bank, Paducah.
Louisiana.—Travis Oliver, president Central Savings Bank & Trust Co., Monroe.
Maine.—Charles G. Allen, president Portland National Bank, Portland.
Maryland.—William S. Gordy, cashier Salisbury National Bank, Salisbury.
Massachusetts.—Carl M. Spencer, president Home Savings Bank, Boston.
Michigan.—Fred S. Case, vice president and cashier First National Bank, Sault Ste. Marie.

Minnesota.—J. H. Ingwersen, vice president First National Bank, Duluth.
Mississippi.—Thad B. Lampton, president Capital National Bank, Jackson.
Missouri.—Dale S. Flowers, cashier Gentry County Bank, Albany.
Montana.—E. H. Westbrook, president Midland National Bank, Billings.
Nebraska.—Elmer Williams, president Commercial State Bank, Grand Island.
Nevada.—Charles W. Mapes, president Washoe County Bank, Reno.
New Hampshire.—Arthur L. Smythe, cashier Franklin National Bank, Franklin.
New Jersey.—Walter E. Robb, president Burlington City Loan & Trust Co., Burlington.
New Mexico.—W. A. Losey, cashier First National Bank, Hagerman.
New York.—William S. Irish, president First National Bank, Brooklyn.
North Carolina.—John F. Wily, president Fidelity Bank, Durham.
North Dakota.—H. T. Graves, president James River National Bank, Jamestown.
Ohio.—W. A. Ackerman, vice president Knox National Bank, Mount Vernon.
Oklahoma.—H. N. Wilson, cashier First State Bank, Bokchito.
Oregon.—Keith Powell, president Bank of Woodburn, Woodburn.
Pennsylvania.—George W. Reily, president Harrisburg Trust Co., Harrisburg.
Rhode Island.—A. R. Plant, president Blackstone Canal National Bank, Providence.
South Carolina.—J. M. Kinard, president Commercial Bank, Newberry.
South Dakota.—Dean H. Lightner, president Citizens Trust & Savings Bank, Aberdeen.
Tennessee.—Joseph P. Gaut, director East Tennessee National Bank, Knoxville.
Texas.—R. W. McAfee, vice president State National Bank, El Paso.
Utah.—L. H. Farnsworth, chairman of board Walker Bros., Salt Lake City.
Vermont.—J. E. McCarten, president National Bank of Newport, Newport
Virginia.—Carroll Pierce, president Citiziens National Bank, Alexandria.
Washington.—R. M. Hardy, president Yakima National Bank, Yakima.
West Virginia.—Oscar C. Wilt, Cashier Empire National Bank, Clarksburg.
Wisconsin.—L. Albert Karel, president State Bank of Kewaunee, Kewaunee.
Wyoming.—S. Conant Parks, president First National Bank, Lander.

In addition to the names listed above the State legislative council, as per by-laws of the association, is composed of the presidents and first vice presidents of the divisions and sections, and the vice presidents of the association and of the trust company, savings bank, national bank, and State bank divisions in each State. The by-laws provide that in each State elective executive council member of the State legislative council (or if there is no such member, the State vice-president of the association) shall be chairman of a subcommittee to be composed of the members of the State legislative council in that State and such other members as the State chairman shall appoint.

FOREWORD

There has long been need for a uniform code of rules governing bank collections which will give the sanction of law to modern customs and practices of banks and obviate the necessity for the printing of special agreements on deposit slips, pass books, and other literature for their protection. Not only are existing rules growing out of earlier conditions which no longer obtain, unsuited to present conditions, but the conflict of such rules, as established in the different States, makes uniformity a desideratum especially as the currency of checks and other paper is nation-wide in scope and the rules governing the collection and payment of such paper should be uniform, irrespective of State lines.

To accomplish the purpose of uniformity and modernization of the law governing bank collections, three successive tentative drafts of a bank-collection code have been prepared and submitted to various bankers, expert in the practice of check collection, to attorneys for banks, and to members of the committee on State legislation and the State legislative council of the American Bankers Association for their suggestions and criticism.

The third tentative draft was approved in substance at the meeting on October 1, 1928, of the committee on State legislation subject to technical changes which the general council was authorized to make preliminary to its being urged by the committee on State legislation through State bankers' associations for enactment by the legislatures of the different States and this action was approved by the executive council at that time.

As finally drafted the code is now presented to the members of the State legislative committee and the State legislative council in the various States and

to secretaries of the State bankers' associations for their consideration and approval of the appropriate committees of such State associations preparatory to being urged through their associations at the 1929 and subsequent sessions of the State legislatures.

It is hoped the detailed provisions herein will prove to be practicable and can be uniformly enacted in all States. Due to the complications of the subject it is a difficult one to regulate with scientific exactness. Attention is particularly invited to the provision that is contained in section 11 which continues the liability of the maker and prior parties upon a check presented by mail to a drawee which defaults in payment. Montana has already adopted such principle of liability as part of its legislation, the theory being that a depositor who tenders his check which requires mailing for payment, should not escape liability to his creditor where the bank which he has designated to make payment can not make good. It will be noted that this section merely gives an option to the holder to dishonor his check and preserve his liability; the option need or need not be exercised. If not exercised, then the drawer of the check is discharged if the drawee charges it to his account but in such case there arises a preference in the assets of the insolvent bank in favor of the owner.

AN ACT TO EXPEDITE AND SIMPLIFY THE COLLECTION AND PAYMENT BY BANKS OF CHECKS AND OTHER INSTRUMENTS FOR THE PAYMENT OF MONEY

Be it enacted, etc.

SECTION 1. *Definitions.*—For the purposes of this code:

(A) *Bank.*—The term "bank" shall include any person, firm, or corporation engaged in the business of receiving and paying deposits of money within this State. A branch or office of any such bank shall be deemed a bank for the purposes of this act.

(B) *Item.*—The term "item" means any check, note, or other instrument providing for the payment of money.

SEC. 2. *Bank is agent for collection.*—Except as otherwise provided by agreement and except as to subsequent holders of a negotiable instrument payable to bearer or indorsed specially or in blank; where an item is deposited or received for collection, the bank of deposit shall be agent of the depositor for its collection and each subsequent collecting bank shall be subagent of the depositor but shall be authorized to follow the instructions of its immediate forwarding bank and any credit given by any such agent or subagent bank therefor shall be revocable until such time as the proceeds are received in actual money or an unconditional credit given on the books of another bank, which such agent has requested or accepted. Where any such bank allows any revocable credit for an item to be withdrawn, such agency relation shall nevertheless continue except the bank shall have all the rights of an owner thereof against prior and subsequent parties to the extent of the amount withdrawn.

SEC. 3. *Item on same bank.*—A credit given by a bank for an item drawn on or payable at such bank shall be provisional, subject to revocation at or before the end of the day on which the item is deposited in the event the item is found not payable for any reason. Whenever a credit is given for an item deposited after banking hours such right or revocation may be exercised during the following business day.

SEC. 4. *Legal effect of indorsements.*—An indorsement of an item by the payee or other depositor "for deposit" shall be deemed a restrictive indorsement and indicate that the indorsee bank is an agent for collection and not owner of the item.

An indorsement "pay any bank or banker" or having equivalent words shall be deemed a restrictive indorsement and shall indicate the creation of an agency relation in any subsequent bank to whom the paper is forwarded unless coupled with words indicating the creation of a trustee relationship; and such indorsement or other restrictive indorsement whether creating an agency or trustee relationship shall constitute a guaranty by the indorser to all subsequent holders and to the drawee or payor of the genuineness of and the authority to make prior indorsements and also to save the drawee or payor harmless in the event any prior indorsement appearing thereon is defective or irregular in any respect unless such indorsement is coupled with appropriate words disclaiming such liability as guarantor.

Where a deposited item is payable to bearer or indorsed by the depositor in blank or by special indorsement, the fact that such item is so payable or indorsed shall not change the relation of agent of the bank of deposit to the depositor, but subsequent holders shall have the right to rely on the presumption that the bank of deposit is the owner of the item. The indorsement of an item by the bank of deposit or by any subsequent holder in blank or by special indorsement or its delivery when payable to bearer, shall carry the presumption that the indorsee or transferee is owner provided there is nothing upon the face of the paper or in any prior indorsement to indicate an agency or trustee relation of any prior party. But where an item is deposited or is received for collection indorsed specially or in blank, the bank may convert such an indorsement into a restrictive indorsement by writing over the signature of the indorser the words "for deposit" or "for collection," or other restrictive words to negative the presumption that such bank of deposit or indorsee bank is owner; and in the case of an item deposited or received for collection payable to bearer, may negative such presumption by indorsing thereon the words "received for deposit" or "received for collection" or words of like import.

SEC. 5. *Duty and responsibility of bank collecting agents.*—It shall be the duty of the initial or any subsequent agent collecting bank to exercise ordinary care in the collection of an item and when such duty is performed such agent bank shall not be responsible if for any cause payment is not received in money or an unconditional credit given on the books of another bank, which such agent bank has requested or accepted. An initial or subsequent agent collecting bank shall be liable for its own lack of exercise of ordinary care but shall not be liable for the neglect, misconduct, mistakes, or defaults of any other agent bank or of the drawee or payor bank.

SEC. 6. *Rules of ordinary care in forwarding and presentment.*—(A) Where an item is received on deposit or by a subsequent agent bank for collection, payable in another town or city, it shall be deemed the exercise of ordinary care to forward such item by mail, not later than the business day next following its receipt either (1) direct to the drawee or payor in the event such drawee or payor is a bank or (2) to another bank collecting agent according to the usual banking custom, either located in the town or city where the item is payable or in another town or city.

(B) Where an item is received on deposit or by a subsequent agent bank for collection, payable by or at another bank in the same town or city in which such agent bank is located, it shall be deemed the exercise of ordinary care to present the item for payment at any time not later than the next business day following the day on which the item is received either (1) at the counter of the drawee or payor by agent or messenger or (2) through the local clearing house under the regular established procedure, or according to the usual banking custom where the collecting or payor bank is located in an outlying district.

(C) The designation of the above methods shall not exclude any other method of forwarding or presentment which under existing rules of law would constitute ordinary care.

SEC. 7. *Items received through the mail.*—Where the item is received by mail by a solvent drawee or payor bank, it shall be deemed paid when the amount is finally charged to the account of the maker or drawer.

SEC. 8. *Items lost in transit.*—Where an agent bank forwards an item for collection, it shall not be responsible for its loss or destruction in transit or, when in the possession of others, for its inability to repossess itself thereof, provided there has been no lack of ordinary care on its part.

SEC. 9. *Medium of payment.*—Where ordinary care is exercised, any agent collecting bank may receive in payment of an item without becoming responsible as debtor therefor, whether presented by mail, through the clearing house or over the counter of the drawee or payor, in lieu of money, either (*a*) the check or draft of the drawee or payor upon another bank or (*b*) the check or draft of any other bank upon any bank other than the drawee or payor of the item or (*c*) such method of settlement as may be customary in a local clearing house or between clearing banks or otherwise: *Provided*, That whenever such agent collecting bank shall request or accept in payment an unconditional credit which has been given to it on the books of the drawee or payor or on the books of any other bank, such agent collecting bank shall become debtor for such item and shall be responsible therefor as if the proceeds were actually received by it in money.

SEC. 10. *Medium of remittance.*—Where ordinary care is exercised, any agent collecting bank may receive from any subsequent bank in the chain of collection in remittance for an item which has been paid, in lieu of money, the check or draft of the remitting bank upon any bank other than itself or the drawee or payor of the item or such other method of settlement as may be customary: *Provided*, That whenever such agent collecting bank shall request or accept an

unconditional credit which has been given to it on the books of the remitting bank or on the books of any other bank, such agent collecting bank shall become debtor for such item and shall be responsible therefor as if the proceeds were actually received by it in money.

SEC. 11. *Election to treat as dishonored items presented by mail.*—Where an item is duly presented by mail to the drawee or payor, whether or not the same has been charged to the account of the maker or drawer thereof or returned to such maker or drawer, the agent collecting bank so presenting may, at its election, exercised with reasonable diligence, treat such item as dishonored by nonpayment and recourse may be had upon prior parties thereto in any of the following cases: (1) Where the check or draft of the drawee or payor bank upon another bank received in payment therefor shall not be paid in due course; (2) where the drawee or payor bank shall without request or authority tender as payment its own check or draft upon itself or other instrument upon which it is primarily liable; (3) where the drawee or payor bank shall give an unrequested or unauthorized credit therefor on its books or the books of another bank; or (4) where the drawee or payor shall retain such item without remitting therefor on the day of receipt or on the day of maturity if payable otherwise than on demand and received by it prior to or on such day of maturity: *Provided, however,* That in any case where the drawee or payor bank shall return any such item unpaid not later than the day of receipt or of maturity as aforesaid in the exercise of its right to make payment only at its own counter, such item can not be treated as dishonored by nonpayment and the delay caused thereby shall not relieve prior parties from liability: *Provided further,* That no agent-collecting bank shall be liable to the owner of an item where, in the exercise of ordinary care in the interest of such owner, it makes or does not make the election above provided or takes such steps as it may deem necessary in cases (2), (3), and (4) above.

SEC. 12. *Notice of dishonor of items presented by mail.*—In case of the dishonor of an item duly presented by mail as provided for in the next preceding section, notice of dishonor of such item to prior parties shall be sufficient if given with reasonable diligence after such dishonor; and further in the event of failure to obtain the return of any such item notice of dishonor may be given upon a copy or written particulars thereof, and delay in giving notice of dishonor caused by an attempt with reasonable diligence to obtain return of such item shall be excused.

SEC. 13. *Insolvency and preferences.*—1. When the drawee or payor, or any other agent collecting bank shall fail or be closed for business by (official to be designated) or by action of the board of directors or by other proper legal action, after an item shall be mailed or otherwise entrusted to it for collection or payment but before the actual collection or payment thereof, it shall be the duty of the receiver or other official in charge of its assets to return such item, if same is in his possession, to the forwarding or presenting bank with reasonable diligence.

2. Except in cases where an item or items is treated as dishonored by nonpayment as provided in section 11, when a drawee or payor bank has presented to it for payment an item or items drawn upon or payable by or at such bank and at the time has on deposit to the credit of the maker or drawer an amount equal to such item or items and such drawee or payor shall fail or close for business as above, after having charged such item or items to the account of the maker or drawer thereof or otherwise discharged his liability thereon but without such item or items having been paid or settled for by the drawee or payor either in money or by an unconditional credit given on its books or on the books of any other bank, which has been requested or accepted so as to constitute such drawee or payor or other bank debtor therefor, the assets of such drawee or payor shall be impressed with a trust in favor of the owner or owners of such item or items for the amount thereof, or for the balance payable upon a number of items which have been exchanged, and such owner or owners shall be entitled to a preferred claim upon such assets, irrespective of whether the fund representing such item or items can be traced and identified as part of such assets or has been intermingled with or converted into other assets of such failed bank.

3. Where an agent collecting bank other than the drawee or payor shall fail or be closed for business as above, after having received in any form the proceeds of an item or items intrusted to it for collection, but without such item or items having been paid or remitted for by it either in money or by an unconditional credit given on its books or on the books of any other bank which has been requested or accepted so as to constitute such failed collecting or other bank debtor therefor, the assets of such agent collecting bank which has failed or been closed for business as above shall be impressed with a trust in favor of the owner or owners of such item or items for the amount of such proceeds and such owner or owners shall be entitled to a preferred claim upon such assets, irrespective of whether the fund representing such item or items can be traced and identified as part of such assets or has been intermingled with or converted into other assets of such failed bank.

SEC. 14. *Act not retroactive.*—The provisions of this act shall not apply to transactions taking place prior to the time when it takes effect.

SEC. 15. *Cases not provided for in act.*—In any case not provided for in this act the rules of law and equity, including the law merchant and those rules of law and equity relating to trusts, agency, negotiable instruments and banking, shall continue to apply.

SEC. 16. *Uniformity of interpretation.*—This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it.

SEC. 17. *Short title.*—This act may be cited as the bank collection code.

SEC. 18. *Inconsistent laws repealed.*—All acts or parts of acts inconsistent with this act are hereby repealed.

SEC. 19. *Time of taking effect.*—This act shall take effect———

EXPLANATORY NOTES

SECTION 1. *Definitions.*—The definition of the term "bank" is broad enough to include all banks whether organized under State or Federal laws. The definition also recognizes that for purposes of presentment and payment of paper a branch or office of a bank is regarded as a separate and distinct institution.

The term "item" as defined includes nonnegotiable as well as negotiable instruments.

SEC. 2. *Bank of deposit is agent for collection.*—The purpose of this section is to establish an agency relation of the bank in which paper is deposited and thus protect it, when paper is deposited indorsed unrestrictedly, which is oftentimes the case, from being held liable to its depositor as owner, as soon as credited to his account. This was so held in City of Douglas *v.* Federal Reserve Bank (46 Sup. Ct. 554), notwithstanding there was a custom to charge back in event of dishonor and the contract provided that out-of-town items were expressly credited "subject to final payment." It was pointed out that in the event of dishonor, the bank could ordinarily have recourse upon the depositor as indorser, but in the particular case, the indorser was discharged, because the item had been paid by a worthless draft of the drawee bank, which failed and the bank of deposit was the loser. Banks generally protect themselves by stipulations on deposit slips, signature cards, or pass books against such liability, by declaring that the bank is agent, not owner. The above section provides a statutory relation of agency in the absence of agreement to the contrary, but if the bank receives the paper unrestrictedly indorsed, it becomes liable as owner to subsequent parties who act in reliance upon its ownership unless it protects itself as provided in section 4.

Subsequent collecting banks are defined as subagents of the depositor but are authorized to follow instructions of the immediate forwarding bank.

Credits given by agent banks for uncollected paper are revocable and do not make the bank responsible as debtor until the proceeds have been received in money or an unconditional credit therefor has been given which has been requested or accepted (see secs. 9 and 10). The provision making the bank debtor where an unconditional credit is given which has been requested or accepted applies in all cases where the presentment is by mail, over the counter, or through the clearings and is based upon the principle that the bank should be responsible as debtor where it becomes owner of a credit which it is not compelled to accept but which it does accept on its own responsibility upon the books of another bank which fails.

SEC. 3. Item on same bank.—The majority of courts hold that credit of an item on the same bank is final and can not be charged back, notwithstanding such item is found not good upon examination of the account. The theory is that the bank is presumed to know at all times the condition of a customer's account. While it is the bank's duty to the drawer-customer of a check to pay or reject it immediately, the courts have held that it is competent for the bank to agree with the payee-depositor that payment be deferred for a reasonable time in order to examine the account. In banking practice, deposited checks on the same bank are immediately credited in the depositor's pass book without opportunity for examination of the drawer's account at the moment and it is clearly unreasonable

for the depositor of an item drawn on the same bank to expect an irrevocable credit until the bank has had a reasonable time to inquire into the account. The code fixes a definite rule that such credit shall be provisional subject to revocation which the bank might exercise at any time during the day.

SEC. 4. Legal effect of indorsements.—The negotiable instruments act defines the legal meaning and effect of certain kinds of indorsements, such as indorsements in blank and special indorsements, which convey title, indorsements "without recourse" which convey title but without liability for nonpayment, conditional indorsements which convey title subject to a condition and restrictive indorsements which either constitute the indorsee the agent of the indorser or which vest title in the indorsee as trustee. As to the latter class of indorsements, the courts are in conflict whether certain forms of indorsements are restrictive and agent-creating or unrestricted and title-conveying and section 4 is designed to clear up this conflict in the case of indorsements "for deposit" and "pay any bank or banker" which have been held both agent-creating and title-conveying in different jurisdictions.

The first paragraph of section 4 provides the legal effect of an indorsement "for deposit" making same restrictive and providing that the bank is agent and not owner.

The indorsement "pay any bank or banker" is likewise made restrictive and creating an agency relation "unless coupled with words indicating the creating of a trustee relationship." Many collecting banks stamp upon items various forms of which the following is a sample:

"This draft is a cash item and is not to be treated as a deposit. The funds obtained through its collection are to be accounted for to us as a trust and are not to be commingled with other funds of collecting bank."

The words "unless coupled," etc., are inserted to cover such condition.

The section further provides not only in the case of indorsements "pay any bank or banker," but in all cases of restrictive indorsements, whether creating an agency or trust relationship, that such indorsements carry a guaranty of genuineness and authority to make prior indorsements and to save the drawee harmless in case of defective or irregular prior indorsements. Most restrictive indorsements are coupled with a guaranty of prior indorsements, and drawee banks generally require such guaranty as a prerequisite of payment. It seems proper, therefore, to have this feature incorporated in the law, but it is qualified by the provision "unless such indorsement is coupled with appropriate words disclaiming such liability as guarantor." This would enable any forwarding bank that did not desire to incur a guarantor liability to couple with its indorsement a disclaimer, such as "without guarantor liability" or other form of disclaimer.

The Code provides that where a deposited item is payable to bearer or is indorsed in blank or specially, the bank of deposit remains agent but subsequent holders have the right to rely on the presumption that the bank of deposit is owner; also that like indorsement or delivery of bearer paper by a bank of deposit or a subsequent holder carries like presumption that the indorsee or transferee is owner where there is nothing on the face of the paper or in any prior indorsement to indicate an agency relation of any prior party. This provision of the Code is in harmony with existing law, for example (we quote from Paton's Digest, vol. 2, pp. 1134 and 1135):

"In Park Bank *v.* Seaboard Bank (114 N. Y. 28) a check on the Park Bank for $8 was raised by the payee to $1,800, indorsed in blank by him, and delivered to the Eldred (Pa.) Bank for collection only. The Eldred Bank indorsed it 'for collection' to the Seaboard Bank in New York, and that bank received payment. It was held that the Seaboard, appearing by the indorsement to be a mere agent, was not liable after it had paid over the money to its principal, the Eldred Bank. Later, in an action by the Park Bank directly against the Eldred Bank (90 Hun, 285), it was held the Eldred Bank was liable, because it was apparently owner of the draft, although, in fact, agent for collection only. The court said: 'In the case of the Seaboard Bank the agency was disclosed; in the case of the Eldred Bank it was not. In the presentation of the draft the Eldred Bank represented itself to be the owner of the draft, and the payment was made by plaintiff under those circumstances. It does not seem to need the citation of authorities to show that where money is paid upon a raised draft without any negligence on the part of the person paying the same it can be recovered from the party to whom it was paid.'"

It is common for depositors to indorse checks in blank when they are placed on deposit, or specially to the bank, and probably not all banks realize that under

such indorsement, although as between bank and depositor, the bank is agent, yet as to all subsequent holders and especially the payor, the bank is liable as apparent owner, in case of raised or altered checks or should the payee's indorsement be a forgery. It has, therefore, been deemed wise to insert a provision that where an item is so deposited or received for collection, the bank may negative the presumption of ownership by writing over the signature of the indorser the words "for deposit" or other restrictive words. This authority would apply to any bank in the collection chain.

SEC. 5. *Duty and responsibility of bank collecting agents.*—This section is intended to clear up the wide conflict between those decisions holding that the collecting bank is liable for the negligence and defaults of correspondents and those holding the bank not liable, provided it exercises due care. Because of such conflicting decisions and uncertainty in the law of those States where no rule has been declared, the code provides a definite rule of liability for default of correspondents, namely, the "due care" rule, known as the Massachusetts rule, which is now followed in a majority of the States. In those States following the so-called "New York rule" that a collecting bank is liable for defaults of correspondents and in the other States where the question is unsettled, the banks are compelled to protect themselves by a special agreement. The weight of authority and the better reasoning is in favor of the Massachusetts rule. A person depositing items is aware that the bank can not collect it through its personal agents and employees; the ordinary exchange charge, if there is one, is very small, in comparison to the service rendered, and the liabilities assumed by the bank if it be held responsible for the acts and conduct of its correspondent bank beyond the measure of care required in selecting a suitable correspondent, is out of all proportion to such charge.

SEC. 6. *Rules of ordinary care in forwarding and presentment.*—This section in effect enacts into law the usual banking custom in regard to forwarding and presenting paper.

Custom has sanctioned the practice of forwarding direct to the drawee or payor bank, contrary to the judicial rule that such method of forwarding is negligence, and the enactment of the American Bankers Association recommended measure which authorizes such practice, now in force in the majority of States, has legalized this custom. The code makes this rule uniform in all States and also legalizes the customary mode of presenting through bank correspondents.

SEC. 7. *Items received through the mail.*—It has always been an uncertain question as to what time in the physical handling of a check received through the mail it is deemed paid. It is to the interest of the drawee or payor bank to fix a definite point of time at which the item shall be deemed paid to avoid trouble and litigation where, for example, an attachment is levied against the customer's account while the check is in possession of the drawee bank or where the drawee seeks to stop payment. The provision only has application to a solvent drawee or payor.

SEC. 8. *Items lost in transit.*—While the law is at the present time in accord with the above, a bank will frequently have trouble with its depositor, where the latter has apparently kept no record of the source of an item and it is difficult to get him to assume responsibility and procure a duplicate. When the nonliability of the bank is established in a definite provision of law, it makes it easier to deal with the depositor on this troublesome question. A similar provision is now a part of the statutory law of California.

SEC. 9. *Medium of payment.*—Methods of payment may be classified as (1) money, (2) draft on a bank, (3) credit, and (4) set-off of exchanged items with settlement of balance by either one of the first three methods.

The principle of section 9 is to authorize the agent collecting bank to receive, instead of money, without being responsible therefor as debtor, the customary method of settlement for an item by draft on another bank or by exchange of items and settlement of balance by money or draft.

The acceptance of a draft on another bank is the ordinary method of transferring the funds from the custody of the payor bank. If, however, the agent collecting bank, instead of accepting money or such draft on another bank, chooses to allow the money to remain with the payor bank and the latter to remain debtor, by accepting a credit on its books, or an unconditional credit on the books of any other bank, this method of settlement of the agent bank's own choosing, under which the payor or some other bank is allowed to remain debtor, instead of the fund being transmitted to the owner, makes the agent collecting bank itself responsible as debtor therefor.

SEC. 10. *Medium of remittance.*—This applies the principle underlying section 9 to the case of the remitting bank, after the proceeds are collected.

SEC. 11. *Election to treat as dishonored items presented by mail.*—The purpose of this section is to permit the agent collecting bank, at its option, to continue the liability of the drawer or maker and indorsers upon a check, not presented over the counter or through the clearing house, but by mail, where the drawee or payor defaults in making payment because of its insolvency.

Presentment direct to the drawee by mail (as distinguished from mailing to an independent agent at the place of the drawee) is customary and legally sanctioned by statute in a number of States and by this Code and it is the opinion of a number of banking experts (although all are not agreed) that the drawer who gives his check upon a bank which can not pay, should not be relieved of his obligation by the mere charging of the check to his account and the issuance by the drawee of a worthless draft therefor but should stand for the solvency of his bank, which is his paying agent, until the latter's draft is at last paid.

Accordingly four contingencies are provided in which the item may be dishonored and the liability of the drawer continued at the option of the agent collecting bank. Where such liability is continued, the recourse is upon the drawer and prior parties and not upon the failed bank. In any case where it is found impracticable, by reason of inability to identify prior parties to an item forwarded to the drawee for which it has attempted to settle in any of the ways above mentioned, the option need not be exercised and in such event the draft or credit given by the drawee or payor will operate as payment of the original item and the owner will have recourse as preferred creditor under section 13.

Should it be found undesirable in any State to adopt the policy declared in this section the same can be omitted; and in such event section 12 should also be omitted and also the opening words in paragraph 2 of section 13, "Except in cases where an item or items is treated as unpaid and dishonored as provided in section 11."

SEC. 12. *Notice of dishonor of items presented by mail.*—The purpose of this section is to supplement the negotiable instruments act which provides for notice of dishonor to preserve the liability of prior parties when an instrument is dishonored by nonacceptance or nonpayment. It is intended to cover the new forms of dishonor provided in section 11. The general requirements of the negotiable instruments act as to giving notice of dishonor will still apply.

SEC. 13. *Insolvency and preferences.*—There is much conflict in the decisions over the right to preference in payment of collection proceeds out of the assets of a failed bank. The purpose of this section is to establish uniform rules based on the better reasoned decisions. Except where the failed bank (whether drawee or payor or other collecting bank) has been accepted as debtor for such proceeds by reason of a requested or accepted credit given by it on its own books or on the books of any other bank, a trustee relation is created with respect to such proceeds both in the case of the drawee or payor after the money has been taken out of the account of the drawer or maker and in the case of an agent collecting bank other than the drawee or payor, which has received the proceeds in any form; and the owner of the item is entitled to preferential payment out of the assets of the failed trustee whether the proceeds can be traced and identified into a specific fund or not.

In case an item is received by a bank which fails before the actual payment or collection thereof, provision is made for return of the item where in its possession or that of the receiver. Furthermore, the provisions of section 13 do not apply to items presented by mail which, at the election of the presenter, are treated as dishonored by nonpayment according to the provisions of section 11.

Sections 14 to 19, inclusive, are self-explanatory.

Mr. HOGUELAND. Now, the section I am particularly interested in is the section that is quoted as a part of my Exhibit No. 3, and that is paragraph 3 of section 13. In the State of Missouri the legislature did not accept one or two sections of the uniform Bank Collection Code, so that it appears as section 11 in the State of Missouri.

Now, paragraph 3 of section 13 of the Bank Collection Code reads like this:

Where an agent collecting bank other than the drawee or payor shall fail or be closed for business as above—

That is specified in the preceding sections—

after having received in any form the proceeds of an item or items entrusted to it for collection, but without such item or items having been paid or remitted for by it either in money or by an unconditional credit given on its books or on the books of any other bank which has been requested or accepted so as to constitute such failed collecting or other bank debtor therefor, the assets of such agent collecting bank which has failed or been closed for business as above shall be impressed with a trust in favor of the owner or owners of such item or items for the amount of such proceeds and such owner or owners shall be entitled to a preferred claim upon such assets, irrespective of whether the fund representing such item or items can be traced and identified as part of such assets or has been intermingled with or converted into other assets of such failed bank.

Since 1929 two other States have accepted the code, namely, Kentucky and South Carolina. I have been able to give reference to the House bill in Kentucky, which the Secretary of State advises me is the correct number of the bill as it was actually passed, but I have no information from South Carolina that will enable me to locate the bill itself or the law, but I have information from Judge Paton that the bill was passed and included section 13, to which I have just referred. Unfortunately, those laws have not been published.

Mr. WINGO. The probabilities are that they copied that verbatim.

Mr. HOGUELAND. Yes; that has been the experience in all States except Missouri, I believe, and possibly Nebraska.

Now, I would like to refer to the decisions holding against our contention, and file a memorandum of authorities.

I have referred to the Hecker-Jones-Jewell Manufacturing Co. case, which is from Massachusetts and probably the leading case, and various other States, such as Mississippi, Georgia, Tennessee, Pennsylvania, Michigan, and Minnesota, have followed it, and then I have also cited the rule which the Federal authorities have been following, and which is from the Larabee Flour Mills case, to which I referred a few moments ago, and in the Larabee case Judge Faris filed a strong dissenting opinion in which he pointed out the discrimination that arises on the question of augmentation of assets as contended for by the Larabee people in that case and as upheld by various State courts, particularly in Missouri, Kansas, and Oklahoma, as well as other Western States.

The Bank Collection Code, as I have said, has been adopted in 11 different States. The courts of some 12 other States have held that these items are of a preferred nature. That makes 23 States in all, and I believe there are 4 States that have been holding that these items are preferred that have adopted the code, such as Missouri and 3 others. That leaves 19 States in all that have either adopted the code or have had recent decisions upholding our theory, that these items are of a preferred character.

In the code of the American Bankers Association, there is no limitation upon the type of items that are to be preferred. Any item that is routed through a bank for collection and remittance, in case of the insolvency of the collecting bank, is to be treated as a preferred claim.

In the Strong bill, the preference only goes to the transferor, or the owner of the document that has documents of title attached thereto, such as a bill of lading or any document conferring title on real estate or personal property. I think that is the reason that the bankers do not prefer the phraseology of the present bill that is up before you gentlemen.

In the handling of our commerce we naturally——

Mr. WINGO. Are you through with the citation of authorities now?

Mr. HOGUELAND. Yes.

Mr. WINGO. May I ask some questions, Mr. Chairman?

Mr. STRONG. Certainly.

Mr. WINGO. I think it would be better to do it now than to come back to that later.

I am glad you are here, because you know more, I think, about the law than any man I have had any correspondence with or heard of.

Mr. HOGUELAND. I do not claim that distinction.

Mr. WINGO. I think we can agree on this, can we not, that the conflict between the different decisions of the courts is more apparent than real?

What I have in mind is this, that while one State court may hold one way and apparently another State court has held just the opposite, the significant thing is that it was not so much a difference in the law, but the real difference was in the application of the law to a different set of facts.

I think we can agree on this, that the apparent conflict is in the main based upon the determination on the facts in each particular case whether the relation of debtor and creditor existed, or whether the trust relation existed?

Mr. HOGUELAND. Yes, sir.

Mr. WINGO. We can agree on that?

Mr. HOGUELAND. Absolutely.

Mr. WINGO. That, as I said before, the conflict is more apparent than real, and in the last analysis there is practical uniformity that the real test is, Do the facts in this case establish the creditor relation, or do they establish a trust relation? Is not that true?

Mr. HOGUELAND. I would not go quite that far, because it seemed to me as I read these different decisions that some of the State courts have held that the payment by check drawn on the collecting bank and a mere transfer of the account from one place to another constitutes an augmentation of assets, and another court on an equal set of facts has held that it does not.

Mr. WINGO. You are hardly correct in saying an "equal" set of facts.

Mr. HOGUELAND. A similar set of facts.

Mr. WINGO. I think you will find a differentiation. In other words, I tried to find a citation of another case in Arkansas that apparently was just the contrary to the First National Bank case, and I do not recall whether the case went to the Supreme Court or not, but I do not think it did, because I can not find the citation, but the distinction was this, that whereas the facts with reference to remitting by check are identical, yet in one case, in the First National Bank case, as I recall—and I have it here but have not gone through it——

Mr. HOGUELAND. That was the Swaney case.

Mr. WINGO. That was the case of the First National Bank in Kansas against a national bank down at Little Rock, and in that case, where the remittance was made by check, one of the determining facts in the case was that there was actually a lot of cash on hand when it closed its doors on June 19; it had cash on hand to the amount of seven thousand and so many dollars. In other words,

the question does not always turn on how the remittance was made or how the payment was made, but sometimes the question of whether or not there is cash left on hand or whether the cash or the proceeds have been dissipated by the insolvent bank is considered.

What I am trying to get at is this, so that the members who are not lawyers will not get the idea that there is a clear-cut conflict between the decisions of the courts upon an identical state of facts, that I have not been able to find any two cases that had an identical state of facts.

Mr. HOGUELAND. That is probably true, but many of them are reasonably parallel.

Mr. WINGO. The whole question, and this whole battle, is around this question, whether or not under a given state of facts a trust relation shall be held to have existed, or whether the relation of creditor and debtor has existed. So the words "preferred creditor" are really bottomed upon the fact that the funds were held in trust.

Mr. HOGUELAND. Certainly.

Mr. WINGO. And therefore that the forwarding bank or milling company shall recover from the assets of the collecting bank the equivalent of trust funds.

That really states the case, I think, between the two conflicting opinions with reference to this bill.

Mr. HOGUELAND. But when you come to the code which the bankers have approved, and I may say that the bankers of the United States have approved a code and they are taking steps to secure its adoption throughout the United States——

Mr. WINGO. That brings up the last question I intended to ask, that in that section 13, paragraph 3, of the code which they are getting the different states to adopt, they undertake there to enumerate certain facts and to say that those facts constitute a trust relation and not a creditor relation.

Mr. HOGUELAND. In other words, they are trying to set up a uniform method of collecting.

Mr. WINGO. In other words, they are assuming that by legislative declaration you can cover all conceivable facts and lay down a yardstick bottomed upon facts and not upon legal principles which will determine the distribution or the allowance of claims against a national bank receiver. That to my mind is the viciousness of the proposal.

Mr. HOGUELAND. The code does not go against national banks, because it has not been brought to Congress; it only goes to regulating State banks.

Mr. WINGO. One other point, and then I am through on this angle of it. The Arkansas case, that held exactly as you wanted, held in favor of the forwarder of the draft, was a case against the receiver of a national bank, and the ablest firm of lawyers in Arkansas, who generally represent corporations, did not take that case to the Supreme Court of the United States, did they?

Mr. HOGUELAND. I do not know.

Mr. WINGO. No, they did not; they acquiesced in it. It was a national bank case; no dispute about it, and even under existing law your forwarder in Kansas was given a preference, and out of that $7,000 in cash he was paid, so that there is no necessity to change the law against a national bank receiver where there are facts like there were in the First National Bank case.

Mr. HOGUELAND. Of course, we feel that that right is being established more and more by the decisions of the State courts. Take the State of Missouri; the earlier State court decisions held against our contention, but the more recent cases have been holding that these items are of a preferred nature.

Mr. WINGO. The trend is such that recently, in the last year, of the $25,000,000 of assets of failed national banks, preferred claims were allowed to the extent of over $12,000,000, just a few thousand dollars less than 50 per cent in assets. Is not that true?

Mr. HOGUELAND. I have not any figures like that.

Mr. WINGO. I can give you the exact figures for the record. I think they are pertinent at this point.

For the fiscal year ending October 31, 1929, the following payments were made to creditors: To preferred and secured creditors, $12,561,313; to unsecured depositors, $12,653,830.

In other words, these preferred creditors got within less than $100,000 as much as the depositors did in connnection with national banks.

Mr. HOGUELAND. Of course, it is a matter of policy.

Mr. WINGO. If this bill had been the law, the great bulk of the assets would have been paid to preferred and secured creditors, and the depositors would have received less than they did. Is not that true?

Mr. HOGUELAND. I have no way of knowing. Of course, the law now up for consideration ties it up with the proposition that the draft must be attached to some document of title, conveying title to real or personal property. The great volume of business is done on checks and drafts without any documents attached thereto, and that presents an entirely different situation. The American Bankers Association want everything cleared.

Mr. WINGO. I am not talking about what they want. I have an old client who is bombarding me in favor of the bill, and I am not trying to find out who wants it, but I am trying to determine whether I should overturn the decisions of the courts and undertake to set up a legislative rule that I think would fit every conceivable case and would overturn the logic of the decisions of the courts heretofore. That is the proposition. I am not interested in who is for it; I want to know how it will work and whether it is practical.

Mr. LETTS. If it is advisable that the State legislatures should inact the collecting code, why are we not considering that here instead of the Strong bill at this time?

Mr. HOGUELAND. That is a thing I cannot answer. I did not know a thing about the code until I got into this legislation.

Mr. LETTS. If you want uniformity, we ought to consider that instead of this bill.

Mr. STRONG. Nobody has introduced a bill for it.

Mr. LETTS. I know, but I am asking why, if we are interested in effecting a purpose, we are going at it this way instead of the other way.

Mr. WINGO. That is a very pertinent question, because if we are going to legislate on this, then we ought to figure out what is the most practical way——

Mr. STRONG. Certainly.

Mr. LETTS. If we want uniformity and the States are adopting uniform laws, why should we not consider the advisability of adopting a national statute that will accomplish that purpose?

Mr. STRONG. Well, when we get into executive session we can discuss that.

Mr. HOGUELAND. The interests that I represent have no opposition to the Bank Collection Code.

Mr. LETTS. Is the Strong bill better than the Bank Collection Code?

Mr. HOGUELAND. No. The bankers say it is less valuable.

Mr. LETTS. But, from the viewpoint of your interests——

Mr. HOGUELAND. It is no better, but it would protect us equally as well.

Mr. DUNBAR. Are you protected now?

Mr. HOGUELAND. We are in many States.

Mr. DUNBAR. Not in all the States?

Mr. HOGUELAND. No.

Mr. WINGO. Why do you single out the practice of those who happen to attach a piece of paper to their draft? Is not the collection the substantial proposition?

Mr. STRONG. I will make a statement to straighten this out. I introduced this bill at the request of the Salina Produce Co., which had recently had a number of lawsuits, and after I introduced it these other shippers that used the banks for like purposes came in and supported the bill.

Mr. WINGO. I understood that.

Mr. STRONG. They did not ask me to support the bill.

Mr. WINGO. It is the old case of some fellow losing in a lawsuit and trying to override a decision of the court by legislative enactment.

Mr. STRONG. It is an attempt to correct a wrong.

Mr. WINGO. The point I was getting at is, Why differentiate between one class of these cases and another, when the fundamental principle of his right, as you say, that this bank should be a preferred creditor, is bottomed upon the right that exists with reference to money and not on the particular form of paper that might be attached to the call for the money?

Mr. HOGUELAND. I grant you that.

Mr. WINGO. I am not complaining, Brother Strong; I knew why you introduced it. I had refused to introduce the same kind of a proposal several times.

Mr. STRONG. I agree with you it is a matter of right, but here is a thing that has always stuck in my "craw": Under the decisions of the courts, if you are a banker and you notify me that you have a sight draft upon me, with bill of lading attached, and I walk into your bank and say, "I want to pay it," and you say, "It is for $1,000," if I draw my check for $1,000 and present it to you and you pay me $1,000 and I turn around and hand that back to you and take the draft, that is a preferred claim.

Mr. HOGUELAND. And recognized by the Federal courts.

Mr. STRONG. But if I simply hand you a check and say, "Here is my check; take that out of my funds," that is not a preferred claim.

Mr. HOGUELAND. A play on words.

Mr. WINGO. No; in the one case it takes the assets.

Mr. STRONG. I know it is based upon a legal distinction.

Mr. WINGO. You have stated the distinction.

Mr. STRONG. There is a legal distinction there; I realize that.

Mr. WINGO. I am conceding that you have accurately stated the distinction.

Mr. STRONG. But, as a moral proposition, there is no difference.

Mr. WINGO. One of the decisions of the court did discuss that moral question.

Mr. STRONG. The man who is receiving that money has no interest in whether you had me take the money and hand it back to you or whether you accepted my check.

Mr. WINGO. But the point I am making is this, that it looks unconscionable to me, but if I become convinced that we ought to change and substitute a legislative rule for the rules that have been laid down by the courts, then I shall immediately say, "Let us make it cover all of these cases where wrong is done."

Mr. HOGUELAND. I want to thank you for giving me the time that you have.

Mr. WINGO. Have you concluded?

Mr. HOGUELAND. I think I have.

Mr. STRONG. We will take a recess until 2 o'clock.

(Whereupon, at 12.30 o'clock p. m., a recess was taken until 2 o'clock p. m.)

AFTER RECESS

The hearing was resumed at 2 o'clock p. m., at the conclusion of the recess.

Mr. STRONG. The committee will come to order. The chairman of the committee has received letters indorsing this proposed legislation from the following concerns, the names and addresses of which will be incorporated in the record at this point.

American Association Creamery Butter Manufacturers, 1404 Chicago Mercantile Exchange, Chicago, Ill.
Ballard & Ballard Co., Louisville, Ky.
The Hoover Co., North Canton, Ohio.
Galveston Mills, Gretna, Va.
Grain and Feed Dealers National Association, West Chester, Pa.
Legislative Committee, National Automobile Chamber of Commerce, Washington, D. C.
The Board of Trade of Kansas City, Mo.
Chas. M. Cox Co., Boston, Mass.
George Curtis Shinn, Wilkins Buliding, Washington, D. C.
Sparta Chamber of Commerce, Sparta, Ill.
Stanard-Tilton Milling Co., Dallas, Tex.
Wichita Mill & Elevator Co., Wichita Falls, Tex.
The Light Grain & Milling Co., Liberal, Kans.
The Kansas Flour Mills Corporation, Kansas City, Mo.
Nebraska Consolidated Mills Co., Grand Island, Nebr.
The Blair Milling Co., Atchison, Kans.
Walnut Creek Milling Co., Great Bend, Kans.
The Shellabarger Mill & Elevator Co., Salina, Kans.
G. B. R. Smith Milling Co., Sherman, Tex.
The Arnold Milling Co., Sterling, Kans.
The Wilson Flour Mills, Wilson, Kans.
Valier & Spies Milling Corporation, St. Louis, Mo.
The N. Sauer Milling Co., Cherryvale, Kans.
The Acme Flour Mills Co., Oklahoma City, Okla.
Maney Milling Co., Omaha, Nebr.
The Southwestern Millers' League, Kansas City, Mo.

Canadian Mill & Elevator Co., El Reno, Okla.
The William Kelly Milling Co., Hutchinson, Kans.
Nebraska Consolidated Mills Co., Grain Exchange Building, Omaha, Nebr.
The Kansas Milling Co., Wichita, Kans.
The Hunter Milling Co., Wellington, Kans.
The Moundridge Milling Co., Moundridge, Kans.
Farmers Grain Dealers Association of North Dakota, Grand Forks, N. Dak.
Bay State Milling Co., Winona, Minn.
Lawrenceburg Roller Mills Co., Lawrenceburg, Ind.
Indiana Grain Dealers Association, Board of Trade Building, Indianapolis, Ind.
Ardmore Milling Co., Ardmore, Okla.
Crookston Milling Co., Crookston, Minn.
Hubbard Milling Co., Mankato, Minn.
Clyde Milling & Elevator Co., Clyde, Kans.
Churchville Roller Mills, Churchville, N. Y.
International Milling Co., Flour Exchange, Minneapolis, Minn.
Shawnee Milling Co., Shawnee, Okla.
Central States Soft Wheat Growers Association, Indianapolis, Ind.
The Security Flour Mills Co., Abilene, Kans.
The Abilene Flour Mills Co., Abilene, Kans.
El Reno Mill & Elevator Co., El Reno, Okla.
Thornton & Chester Milling Co., Buffalo, N. Y.
Federal Mill (Inc.), Lockport, N. Y.
Slater Mill & Elevator Co., Slater, Mo.
Bowersock Mills & Power Co., Lawrence, Kans.
Everett, Aughenbaugh & Co., Minneapolis, Minn.
Oklahoma City Mill & Elevator Co., Oklahoma City, Okla.
Northwest Spring Wheat Millers Club, 526 Security Building, Minneapolis, Minn.
Merritt Engineering & Sales Co. (Inc.), Lockport, N. Y.
Baldwin Flour Mills Co., Minneapolis, Minn.
Commander-Larabee Corporation, Minneapolis, Minn.
Ewart & Lake, Groveland, N. Y.
Wabasha Roller Mill Co., Wabasha, Minn.
General Mills (Inc.), Chamber of Commerce Building, Minneapolis, Minn.
The Red Wing Milling Co., Red Wing, Minn.
Tennant & Hoyt Co., Lake City, Minn.
Phelps & Sibley Co., Cuba, N. Y.
G. S. Johnson Co., Davenport, Iowa.
International Milling Co., Buffalo, N. Y.
The Acme Flour Mills Co., Oklahoma City, Okla.
Farmers National Grain Dealers Association, Hillcrest Building, Omaha, Nebr.
The Alva Roller Mills, Alva, Okla.
Union Equity Exchange (Inc.), Enid, Okla.
Shawnee Milling Co., Shawnee, Okla.
Eagle Milling Co., Edmond, Okla.
Enid Milling Co., Enid, Okla.
Ponca City Milling Co., Ponca City, Okla.
Canadian Mill & Elevator Co., El Reno, Okla.
Farmers Co-Operative Grain Dealers Association of Kansas, Nelson Building, Hutchinson, Kans.
Hiawatha Milling Co., Jackson, Miss.
North Pacific Millers Association, Tacoma, Wash.
Springfield Milling Co. (Inc.), Springfield, Minn.
Mente & Co., Inc., New Orleans, La.
J. Allen Smith & Co., Knoxville, Tenn.
Lexington Roller Mills Co., Lexington, Ky.
Russell-Miller Milling Co., Minneapolis, Minn.
Farmers Elevator Co., Chappell, Nebr.
The Larabee Flour Mills Co., Kansas City, Mo.
Fisher Flouring Mills Co., Seattle, Wash.
Happy Feed Mills (Inc.), Memphis, Tenn.
Equity Union Grain Co., Kansas City, Mo.
Spartan Grain and Mill Co., Spartanburg, S. C.
Meridian Grain & Elevator Co., Meridian, Miss.
The Mauser Mill Co., Treichlers, Pa.
Kentucky Feed & Grain Co., Louisville, Ky.

The Blue Ridge Millers Association, Mount Airy, Md.
Allentown, Pa., Chamber of Commerce.
F. M. Crump & Co., Memphis, Tenn.
International Sugar Feed Co., Memphis, Tenn.
Farmers Grain Dealers Association of Iowa, Fort Dodge, Iowa.
General Mills (Inc.), Chamber of Commerce Building, Minneapolis, Minn.
Vitality Mills, 166 West Jackson Boulevard, Chicago, Ill.
Cannon Valley Milling Co., Chamber of Commerce Building, Minneapolis, Minn.
The Blair Milling Co., Atchison, Kans.
American Feed Manufacturers Association, 53 West Jackson Boulevard, Chicago, Ill.
Purina Mills, Fort Worth, Tex.
The Allen & Wheeler Co., Troy, Ohio.
Valier & Spies Milling Corporation, St. Louis, Mo.
Kansas Flour Mills Corporation, New York Life Building, Kansas City, Mo.
The Cherokee Mills, Cherokee, Okla.
The Alva Roller Mills, Alva, Okla.
Flour Mills of America, Ind., New York Life Building, Kansas City, Mo.
The Kansas Grain Co., Hutchinson, Kans.
The Anthony Mills, Anthony, Kans.
New York State Feed Manufacturers Association, Waverly, N. Y.
General Foods Sales Co. (Inc.), Postum Building, New York, N. Y.
Omaha, Nebr., Chamber of Commerce.
Millers National Federation, 616 Mills Building, Washington, D. C.
Muskogee Mill & Elevator Co., Muskogee, Okla.
The National Fertilizer Association, 616 Investment Building, Washington, D. C.
Farmers National Grain Corporation, 343 South Dearborn Street, Chicago, Ill.

STATEMENT OF JAMES L. KING, CHAIRMAN LEGISLATION COMMITTEE GRAIN AND FEED DEALERS NATIONAL ASSOCIATION

Mr. KING. I am chairman of the legislation committee of the Grain and Feed Dealers National Association, and my home is West Chester, Pa. The association has a membership, direct, of about 1,300, and has an affiliated membership from 17 State associations.

The members of the Grain and Feed Dealers National Association strongly urge the passage of H. R. 5634, known as the Strong bill, the purpose of which measure is to protect shippers who issue drafts and send them through distant banks for collection.

Court decisions under existing law have virtually made the drawer of a draft a depositor in the collecting bank, so that, in event the bank of collection fails, the shipper becomes a depositor in it with such rights only as ordinary creditors.

Grain dealers regard such court decisions as doing violence to common justice, because the drawer of the draft is in no sense a depositor in the bank.

Several years ago, when country banks were failing in large numbers in the middle west many members of the Grain and Feed Dealers National Association suffered severe losses when their drafts were applied to the assets of the failed banks. In a number of cases grain shippers whose drafts had been so applied received but a fraction of the face value of their drafts when the receiver finally liquidated the bank's affairs.

We hold that banks handling such drafts act merely in the capacity of collection agencies and that the proceeds of such drafts should not be commingled with the regular funds of the banks. We maintain

that there is a distinct and decided difference between the position of the drawer of such a draft and a regular depositor in a local bank. The latter is "on the ground," as it were, and is presumed to know something about the bank's affairs. He has a personal acquaintance with the officers of the local bank, knows their character, their ability, and their standing in the community, and is thus in a position to protect himself by withdrawing his account should he at any time feel the necessity of thus safeguarding his interests.

The drawer of a draft knows nothing about the local bank to which his paper is sent for collection. He may live in a community hundreds of miles distant. He asks the bank at destination merely to perform a collection service for him, and in such cases we regard the commingling of the shipper's funds in insolvent banks as an injustice.

We are aware the Comptroller of the Currency has objected to the Strong bill on the ground that the measure "would create a preference from the mere fact of collection of the proceeds regardless of whether or not such proceeds were afterward traceable to the hands of the receiver." He then proceeds:

> This is clearly unjust to the general creditors. The assets of the general creditors should not be taken for the purpose of preferring a creditor whose property is not included within said general assets.

It seems to us that this opinion does violence to the property rights of shippers. We believe that the proceeds of collected drafts can not justly be treated as common deposits, which is the effect of the present practice. We contend that the law as it now stands puts an unnecessary and unjust hazard upon shippers.

We are aware that there is great confusion respecting the liability of collecting banks which fail, but this confusion arises through the lack of a proper law which shall distinctly point out who is entitled to preferred claims. We know that the receivers of failed banks are placed in a quandry with reference to the disposition of assets and as to whether certain assets are impressed with a trust in favor of the owner of an item or items. It is plain something ought to be done to clear up the situation so that the innocent shipper of goods may be protected. There certainly should be some modernization of the law governing bank collections.

We respectfully urge that your committee report out the Strong bill, or one of a similar nature, that will protect the innocent drawer of drafts sent for collection to distant banks. We feel strongly the need of such protection in the grain business, because it is not uncommon for shippers to sell grain to buyers located hundreds of miles away. Grain merchants in Minneapolis, for example, deal freely with buyers on the Pacific coast, as well as with purchasers of grain as far south as Florida. The same situation obtains with reference to dealers in all the larger terminal markets. The grain business is an interstate business, and it needs for its protection a modern and uniform law which receivers of insolvent banks can administer with justice to all concerned.

Mr. WINGO. You have heard the statements made here by Mr. Hogueland, of the Southwestern Millers' Association?

Mr. KING. Yes.

Mr. WINGO. You agree with him pretty thoroughly?

Mr. KING. Well, of course, he dealt with it in a legal way. I am not a lawyer.

Mr. WINGO. I understood you are not.

Mr. KING. I have never lost any money myself. I have been in business since 1883, but perhaps it has been more through good luck than good management.

Just recently there was brought to my attention the necessity for some law of this kind by reason of three bank failures in Monroe, N. C. All of the banks in that town closed. I happen to do a lot of business in Monroe, N. C., selling wheat. It runs into a great many thousands of dollars, and I should be placed in a very uncomfortable position if caught with drafts down there under the court decisions at this time.

Mr. WINGO. You are speaking of court decisions, but you are not a lawyer?

Mr. KING. No, sir.

Mr. WINGO. But from what you have heard, you realize it is not so much a conflict of law but is a matter of applying agreed principles of law to the different facts in each particular case?

Mr. KING. Yes.

Mr. WINGO. What you wish, as I understand it, is you want to remove that uncertainty by having clearer statements of facts in legislative rules instead of relying upon the rules laid down by the courts?

Mr. KING. Yes.

Mr. WINGO. I do not blame you shippers for getting rid of all the risk you can and letting some one else bear it.

Mr. KING. In reference to the process of handling these drafts, Mr. Wingo—your name is Wingo?.

Mr. WINGO. Yes.

Mr. KING. I have been in business a great many years and have sent out a great many drafts. There are several reasons why they are not sent through the regular channels of collection. One is that at the present day transportation facilities are very quick. If they go through the regular processes oftentimes the draft with the collateral attached will reach destination after the car has arrived. That is one reason for not sending them that way.

Another is a buyer will often request a shipper to send to a certain bank in a town in which he is located because of some financial or credit arrangement that he may have with the bank. Then, too, we get, of course, a little more prompt return if everything is paid, if the draft goes that way. The drafts are put, in a great majority of the cases, into the local bank at the point of origin and are either sent direct and an exchange charged for collection, or they go through the Federal reserve or the regular correspondent that the bank may have.

Mr. WINGO. I think it is true, from my investigation—and I wondered if that was your observation—that in the great majority of instances, the shipper takes the draft with the bill of lading attached to his own local bank and that his own local bank either forwards it direct to the bank at the point of destination or he sends it through the Federal Reserve Bank.

Mr. KING. That is correct.

Mr. WINGO. But it is true, I think from my investigation, that practically in all the cases the shipper does use his own bank as a forwarder.

Mr. KING. Yes; I think in a great many cases. Sometimes they are sent direct by the shipper to some bank at the point of destination.

Mr. WINGO. I think we can all agree that that is not a general rule. As a general rule the shipper deposits with his own bank for several reasons. One of them is that he is naturally relying upon his own banker to handle his business and his own banker, in most instances, will give him immediate credit for that, with the right to charge it back to him and charge him for the estimated period of the float. If it goes through the Federal reserve bank they have fixed rules in regard to that—fixed days.

But if he sends it direct, when he settles for it he charges him with the interest from the date he received the draft and gives you the credit and charges interest, and in addition, charges you exchange and then he also charges you what the collecting bank charges him for remitting the exchange. In most cases, I think that is the process.

Mr. KING. Yes. In my own case, if I put a draft in my local bank and direct them to send it to some particular bank or through the Federal reserve they credit me in my account for that general item, unless I have it "No protest." The account is kept in the local bank of that draft with the collateral attached, and if I need money, I can negotiate a loan against that draft as occasion requires.

Mr. WINGO. I think you will find on investigation that it is rare that a car will reach the destination, unless it is a very near-by point, prior to the time the draft will reach that point through the Federal reserve.

Mr. KING. I do not think so. It has gotten so within the last two or three years I do not suppose I send one draft out of ten through the regular correspondent channel.

The cars of grain come through from Chicago to points of destination in Pennsylvania in about four or five days.

Mr. WINGO. The draft should come through in three.

Mr. KING. Yes; but it takes two days, at least, for the draft to come from Chicago to me.

Mr. WINGO. It should not take two days.

Mr. KING. But that is about what it takes.

Mr. WINGO. I have been testing these things. Take from Texarkana, for instance: You make a complete circuit on it in from four to six days. Six days is the outside in a banking transaction. I have been testing it out not only on this, but on the question of the period that the Federal reserve banks—the arbitrary days they have in reference to clearing and credits, and I find, at the very outside, six days is the longest time that anything from here, from the city of Washington, takes to make the complete round.

For illustration, I can sit down to-day and send a check to a man in a remote country town in my district, off of a trunk-line railway, on a sawmill railroad, and that check will come back and be in the Sergeant at Arms office and be paid in five days. It makes a complete round of the Federal reserve system and gets here. A draft goes just as swift, does it not?

Mr. KING. Perhaps it does. For instance, if I make a draft on a party at Lancaster, Pa., or Harrisburg, the local bank first sends that draft to Philadelphia or if it is some point outside of Lancaster or Harrisburg, they will send it to the nearest central point they correspond with and that central point will send it to some other point

before it finally reaches the town where the consigneee expects delivery of the goods. In the meantime the car may come in and if it does arrive before the draft does, if it is a private siding, there is $6.30 added if the bill of lading is not in for the day succeeding the arrival and then for the next two days $2 a day for each succeeding day and $5 a day for each succeeding day after that.

For instance, if I am trading with Philadelphia from an interior point, we know that the bank will send the draft direct to some bank they are corresponding with in Philadelphia, but if it is some suburban point or interior point, the process is rather slow and rather uncertain and for that reason we send the majority of them direct.

Mr. WINGO. While it is not connected with the matter directly, we are glad to have that information. We are very much obliged to you.

STATEMENT OF S. H. ROGERS, OF THE WILKINS-ROGERS MILLING CO., OF WASHINGTON, D. C., REPRESENTING THE NATIONAL SOFT WHEAT MILLERS ASSOCIATION OF NASHVILLE, TENN.

Mr. ROGERS. Mr. Chairman, the purpose of my statement is to establish that the millers of the country are practically unanimously in favor of this bill and that I believe was pretty generally and definitely established at the morning's session.

I am here representing the National Soft Wheat Millers Association of Nashville, Tenn. I have a telegram from Mr. W. H. Strowd, the secretary of that association, giving me that authority, and I simply want to read that telegram into the record. I should like to state that the Soft Wheat Millers Association is made up of about 100 member mills scattered over the southeastern, the southwestern, the central, and eastern States and producing about 5,000,000 barrels of flour annually. I shall read the telegram. It is addressed to me—S. H. Rogers, Wilkins-Rogers Milling Co., Washington, D. C.:

> The Strong bill (H. R. 3634) will be before Banking and Currency Committee next Friday morning 10.30. Every member of our association strongly advocates this bill, but it is impossible for me to be present. Will you please represent our association at this hearing on the basis of the facts contained in this letter; we consider this of the greatest importance to every member of the milling industry. Understand Hogueland will be present and probably federation will also be represented.

I simply want to emphasize the fact that Mr. Strowd says that every member of our association strongly advocates this bill.

Mr. WINGO. We are glad to have you here, but I can assure you that your people have already demonstrated their interest. I think I have seen but one group that has written their Congressmen more telegrams and letters than your group, and that is the sugar group. But we are used to that. For instance, I have received three telegrams while I have been sitting here. Here is a typical one from a man who is a good friend of mine, a banker. He is wiring me to support the bill which he has never read and does not know what is in it. He, however, is one of those fellows I can write frankly to and tell him that I know it has been suggested he wire me and I would be delighted to have him send me a copy of the wire he received asking him to wire me. That is part of the propaganda.

You people are entitled to that. I am not one of those members who is afraid some lobbyist will run away with me and corrupt my legislative virtue. I am not scared at all some of you gentlemen will overreach me.

Mr. ROGERS. I found, from the morning's session, that my statement was pretty generally superfluous.

Mr. WINGO. Oh, the millers are a fine lot of people and I used to represent them, and all of my old clients have reminded me rather pointedly of my old relations [laughter].

STATEMENT OF HON. FRED G. JOHNSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Mr. JOHNSON. I just want to appear and be recorded in favor of this bill, representing some of my constituents.

The Nebraska Consolidated Mills Co., of Grand Island, Nebr., wrote me a letter of which I would like to incorporate a part, at least, in the record. This refers to the Strong bill (H. R. 5634):

> This bill provides that collection items sent through national banks should not be intermingled with depositors' funds and should be preferred claims.
>
> We are absolutely convinced that this is the only equitable way for such things to be handled. We have never explained the situation to any one who did not agree with us. * * * For instance: If we shipped a car of corn to a party at Scottsbluff and drew a draft with bill of lading attached, the collecting bank would assess their regular fee and would merely be acting as our agent. In other words, this is a service which the banks render, and according to our information is a source of considerable revenue. We can not see why funds so collected should have anything to do with the general deposits. In other words, this is a separate department of the banking business, and to have it intermingled with the banks' funds as a deposit puts an undue burden upon commerce. * * *
>
> If there is any question in your mind as to whether or not our position is equitable, we would be glad to elucidate further. However, we feel sure if you would talk to any banker handling such items, he would readily agree with us that the position we are taking is equitable.

I wish to say that two of their mills are located in the district I represent—the fifth congressional district, one at Grand Island and one mill at St. Edward, and I merely wish to appear in their behalf and express myself favorably to the bill.

I thank you.

STATEMENT OF CHESTER H. GRAY, REPRESENTING THE AMERICAN FARM BUREAU FEDERATION

Mr. GRAY. Mr. Chairman, the interest of the farmer who produces any of the staple crops which have to go through the markets in the manner which Congressman Strong's bill covers, is similar to that of the millers, commission merchants and others at the terminal market. It is a sort of mutual interest.

To make a practical demonstration of our interest in the matter, let me take my own experienced in regard to shipping grain to Kansas City—not that I have ever lost any money by having banks close which had the settlements in transit, but to show the speed or the lack of speed with which the settlements can be made.

I own and operate 400 acres of land 100 miles south of Kansas City. I have from two to five carloads of wheat to sell every year. I sell that through the Farmers' Union Jobbing Association at Kansas City, which is a cooperative organization with a membership on the board of trade.

At my end of the line, I do not patronize a bank in these grain transactions, because I ship the grain myself direct to the cooperative terminal agency and by so doing I remove the possibility of getting penalized under the conditions which this bill is seeking to correct; that is, I remove one bank from the chain of collecting agencies, or intermediate agencies between me and the sale at Kansas City.

This wheat gets to Kansas City in carload lots and the day following its arrival at Kansas City I get my mailed notice from the Farmers Union Jobbing Association that it has been sold; that is, it is sold the day it gets there ordinarily, if it does not get there too late in the day.

However, with that announcement from the Farmers Union Jobbing Association that my wheat has been sold, stating the price and the grade, and so forth, I do not get the return check, draft, or whatever it may be to pay me. That comes along later. Remember that my farm is only 100 miles from Kansas City and ordinarily it takes me about one week to get payments for each car of wheat that I send; last year it was two weeks and a few days over on one particular car before I got my check back for that specified car of wheat.

I do not know why I was so late in getting payment.

Mr. BRAND. Why all that delay?

Mr. GRAY. I am saying, Mr. Congressman, I do not know why that delay happened, but what I am leading up to is this: That evidently the returns for that car of wheat were somewhere between the Farmers Union Jobbing Association, which sold the wheat, and Chester Gray, myself, who produced it and offered it for sale. It was in some bank or it had not been collected from whomsoever or whatever firm purchased it; in other words, I was under a risk of loss, had I drawn a draft against it, in that instance for about two weeks, or usually one week from the day it was sold in the Kansas City market on the board of trade and the time I got the check back in the mail by rural delivery.

It is a risk, that has never penalized me a bit thus far, but it is a risk that I understand this bill seeks to correct.

The application I make of that is this, that farmers ordinarily do not handle their grain as I do. If they are members of a cooperative organization—as I am locally, but can not patronize it locally because its elevator is 5 miles from my farm, and I have a switch on the railroad contiguous to my farm, and it is not practicable for me to use their facilities—they go to the local cooperative to do the work and add one more element of danger of loss. In my case I eliminate the local bank, because I am an agency which the Farmers Union Jobbing Association at Kansas City recognizes, and I do not have as much risk in the matter as the average farmer would have to take who has a negotiable instrument drawn. If anything goes wrong in any bank, there is one bank, in my case, less than in the average case. In the case of the farmers who ship wheat through the Farmers Union Jobbing Association at Kansas City, or the local cooperative elevator, or the local so-called old line shipper, one or the other of those people bear this burden in some way or another, and it usually comes back to the farmer almost—if not altogether—with 100 per cent reflection against his bank account. Some way or another it comes back against him, because if the millers have to bear these losses of banks closing with drafts in transit they, in their subsequent

dealings, will try to buy at enough savings to make up their losses, so that means it comes back to the farmer if not directly, indirectly.

I can not blame the millers for that kind of activity. I would do the same thing if I had suffered losses on my drafts. So, directly or indirectly this penalizing comes back on the farmer, whether he raises corn, wheat, vegetables, or whatnot, that is shipped in carload lots.

I wish to give this personal relation of my own experience as a comparison to show you gentlemen that the round of collections from the time that a farmer ships his grain to the time he gets his money back is not just as quick as the mail can go to the terminal and come back.

There are delays in between of one or another nature some of which I do not know the cause of, and the longer the delay continues, the greater the danger to the farmer if some such legislation as this is not passed.

Now, about the question of preferred creditors, it does seem to us, in the Farm Bureau, that this bill of Congressman Strong, in setting up, as its language contemplates, two classes of creditors, preferred creditors on the one hand and regular creditors on the other, is a perfectly justifiable and ethical piece of legislation for two reasons, if not for others. First, a person, farmer or otherwise, who chooses his local bank—a national bank in this case as the legislation would require—chooses that bank as his agent to handle his surplus moneys and if that bank goes to the wall, the man or the farmer who puts his money in, must, by common practice, suffer from the deficiencies of his agent. He has chosen the agent and if the agent goes bad, the penalty must be on the man who chose the agent, as well perhaps, as on the agent.

In the case of myself, or any other person who ships products, we can not choose and do not choose those banks in Kansas City or elsewhere through which our returns circulate before they get back to us on those carloads of commodities. I am perfectly helpless as to the financial concerns through which those returns come back to me and I am not to be penalized, if I am not mistaken in my position, for the failure of a bank enroute handling my draft, with which bank I had nothing to do in choosing and which bank is not my agent.

So I say one reason there should be a separation of preference as between a local depositor and a drawer of a negotiable instrument based on goods in transit, is that the local depositor in doing business with a local bank, State or national, chooses it as his agent and must be more or less responsible for its actions. In the other case that of the beneficiary of a draft, you are not in a position to choose your agent—the bank that handles your draft in transit—and therefore are not to be classified in the same category as if you had chosen your agent.

The second reason I see that there is a basis for preferred and regular creditors is this, that this money for my wheat, for instance, coming through banks at Kansas City, does not add materially to their assets, because it is not there long enough.

If I should by this legislation being enacted be created a preferred creditor, it would not seriously, if at all, penalize the regular depositors of those banks which might fail, for the reason that my little piece of money nor any other transit money coming through in a day's run

does not add enough to the assets of the bank to make any appreciable or measurable difference to the amount of money that the local depositors would get in the final settlement of the defunct banks. So the situation is such that I, being penalized for the action of a non-agent bank would be unfairly treated if the legislation is not passed; whereas the depositor, not being preferred over me, if the legislation is passed, is not unfairly treated if I am given the preference contemplated in this law.

So I am frank to say, Mr. Chairman, your bill, seeking to set up a different degree of preference is to be desired and it seemingly is an ethical procedure because there is a difference in the two cases between the local depositors and the transit depositor who does not choose his agent.

Mr. WINGO. You bottom your support of the bill on the ethical grounds you have stated?

Mr. GRAY. Yes, sir; as well as the practical one I have just enumerated the delays in getting your returns which delays imperil the man back yonder who grows the crop.

Mr. WINGO. Let us trace that practical proposition. You ship your wheat to whom, in Kansas City?

Mr. GRAY. The Farmers Union Jobbing Association.

Mr. WINGO. They give you a report on when it is sold and how much it is sold for, but they do not send the remittance?

Mr. GRAY. I get that report by mail following the day of the sale and the sale is made ordinarily the day after the wheat reaches the jobbing association.

Mr. WINGO. And it is sometimes a week or two before they send your check?

Mr. GRAY. Yes, sir.

Mr. WINGO. How will the bill expedite sending the check to you? Do you think the bill will expendite your getting your check?

Mr. GRAY. No, but it will make me or others like me who use their local banks safer if something happens to that check by banks going into bankruptcy before the check get to me.

Mr. WINGO. They send their personal check drawn on their bank, do they not?

Mr. GRAY. No.

Mr. WINGO. What kind of a check do they send you?

Mr. GRAY. Ordinarily I get the check of the firm or whoever it was that bought the wheat. Sometimes it is one firm and sometimes it is another.

Mr. WINGO. In other words, the cooperative agency acts as your agent and sells it and the person who buys your car of wheat sends you a check?

Mr. GRAY. No; the check comes through the Farmers Union Jobbing Association, but it is not the check of the Farmers Union Jobbing Association.

Mr. WINGO. They write a check—say it is the St. Joe Milling Company that buys the wheat through the Farmers Union Jobbing Association in Kansas City—the St. Joe Milling Co. gives a check on a St. Joe bank, payable in favor of Mr. Gray and delivers that check to the St. Joe agency to whom you have sent your wheat. Is that the idea?

Mr. GRAY. That is the way it is ordinarily done.

Mr. WINGO. And that sales agency mails you the check in from one to two weeks after the sale?

Mr. GRAY. Yes; but it varies in point of time.

Mr. WINGO. You think if this bill is passed that that will have a tendency to make that check that they send you safer?

Mr. GRAY. Yes, sir, in the ordinary practice of business; because if any bank through which that check is cleared goes bankrupt during that time, I will be a preferred creditor.

Mr. WINGO. The check will not be cleared until it gets to you and you put it in the bank?

Mr. GRAY. Not finally.

Mr. WINGO. It would not be cleared at all.

Mr. GRAY. No.

Mr. WINGO. It has never been in the bank until you get it?

Mr. GRAY. It is drawn on a bank.

Mr. WINGO. I know it is drawn on a bank, but when you get it, you take it and deposit it in your bank. Now, let us follow that check. It is drawn on the bank and you have certain risks—I just want to see your viewpoint; I am the same kind of farmer you are and I am trying to find out how we farmers will be benefited—the bank at St. Joe may fail between the time it was drawn on it and the time it is presented to them for payment.

Mr. GRAY. Yes.

Mr. WINGO. Suppose it fails before that agency in Kansas City mails it to you: How would this bill help you there?

Mr. GRAY. It would make me a preferred creditor on the bank.

Mr. WINGO. Preferred creditor of whom?

Mr. GRAY. Any bank on which the check was drawn.

Mr. WINGO. No; it would not. You are not a lawyer, so I will agree to leave that to any lawyer, hide, flesh, and feathers, if that is not true. Personally I think you have been misinformed. We will say the bank has failed before you receive the check. The debt has not been discharged.

Mr. GRAY. That is true.

Mr. WINGO. Suppose it fails after the check gets into your hands: Do you contend this bill would make you a preferred creditor of the bank in St. Joe?

Mr. GRAY. I think it would after I deposited my check in my local bank.

Mr. WINGO. Now, just a step at a time. Before you deposit it in your local bank, do you think it would make you a preferred creditor?

Mr. GRAY. I think so in the case of the average farmer who uses his local bank.

Mr. WINGO. Now, show me the provision in that law that would make you a preferred creditor?

Mr. GRAY. I do not know the exact language.

Mr. WINGO. We want to trace this right through the various stages. We farmers are interested in tracing it through. If you say it will help us farmers, I want to find out how it will.

Mr. GRAY (reading):

That upon appointment of a receiver of any national bank the transferor of a negotiable instrument transferred to such bank for collection shall be a preferred creditor in the amount of the liability of such bank, if such negotiable instrument

(1) is drawn against the delivery of an accompanying document of title relating to real or personal property; (2) has been transferred to such bank after the enactment of this act; and (3) has been collected, either in whole or in part, by such bank.

Mr. WINGO. The first states "is drawn against the delivery of an accompanying document;" but you have no accompanying document. You would not come under that. You ship in open shipment.

Mr. GRAY. I get the bill of lading from my freight agent and ship the bill of lading to the Farmers' Union Jobbing Association, and the average farmer has his local banker draw a draft against it.

Mr. WINGO. But you do not attach any draft to it.

Mr. GRAY. No.

Mr. WINGO. You would not come under No. 1?

Mr. GRAY. No; I would not come under No. 1, because I did not attach any draft.

Mr. WINGO. You would not come under No. 2, because No. 2 refers to the question of time of the transit of the draft and you have not got any draft. It would not come under No. 3 because it has not been collected in whole or in part, and that is all there is to that.

Mr. GRAY. Why has it not been collected in whole or in part?

Mr. WINGO. Because, in the illustration I have used, you have not yet put it in the bank. It has not been collected.

We will take the next step. Perhaps we will locate where the farmer will be helped.

Suppose you deposited in the local bank and the bank at St. Joe fails before that bank sends it? There is nothing in this bill that would make you a preferred creditor there.

Mr. GRAY. But it has been collected in whole or in part——

Mr. WINGO. We will get to that——

Mr. GRAY. As soon as it is sold by the Farmers' Union Jobbing Association and the collection transaction is started between the agency and the purchaser of the wheat.

Mr. WINGO. That set-up is not covered by this bill at all.

Mr. GRAY. I believe it is covered in No. 3. If is is not, it should be.

Mr. WINGO. It could not be; that could not be covered.

Mr. GRAY. We then insist that No. 3 include it.

Mr. WINGO. That is not a transaction between you and the bank; that is a transaction between you and that farmers' warehouse. This is a bill that has to do purely with whether or not the proceeds of the draft, with a title document attached, shall be identified as trust funds or those of a creditor. That is all that it is. It undertakes to determine whether or not the transaction constituted one of principal and agent, or of debtor and creditor. Where there is a draft sent to a bank and the draft has been collected, and the bank that collected it fails before the drawer gets his money, then the question under this bill is whether the relation is that of principal and agent or creditor and debtor.

Now, if you think that you or I or any other farmer comes under this bill, you have been misled; you had better get busy with your attorney and make up an amendment to take care of us farmers. This bill is for the fellow, the process man who takes your wheat and turns it into flour or something else and he ships it to the country town and the country-town bank fails and, if it fails after this bill passes, the farmer is going to get "skinned" under this bill.

Mr. GRAY. Under this bill, would there not be an application if, in the case I related typifying myself as an average farmer, something should happen to the bank through which the purchaser of my wheat makes his clearances? Referring to that part of the transaction between the Farmers' Union Jobbing Association and the purchaser of my wheat—if something should go wrong in there, do you think the Farmers' Union Jobbing Association is going to send me the price of my wheat?

I think the bill applies to that part of the transaction as well as elsewhere.

Mr. WINGO. If the milling company bank failed before they gave them a check?

Mr. GRAY. If the Farmers Union Jobbing Association sold my wheat to the X Milling Co., and before the Farmers Union Jobbing Association got the check back, the bank in which the X Milling Co. does its business should go bankrupt, I would consider that I, a farmer, had a direct interest in that, because I would not get my money from the Farmers Union Jobbing Association.

Mr. WINGO. But in that case the check is not patable to the farmer, but to the marketing agency.

Mr. GRAY. But it might be paid to me, but come to me through my agent, the local bank.

Mr. WINGO. As I understand the situation you are putting forth, the X Milling Co. delivers a check payable to Chester Gray to your agent, this sales agency, but the check is payable to Chester Gray. Now, the question of being a preferred creditor can never arise under this bill on that check. I think Mr. Hogueland will say that is true. I do not think there is a lawyer in the room that will tell you that is not true.

That is no reflection on you, because I understand that you are not a lawyer. I am trying to show you that you have a misconception of the bill.

Mr. STRONG. The purpose of the bill is to protect men who draw drafts with their bills of lading or other evidence of title attached. Supposing that you shipped your wheat to some little elevator and you would draw a sight draft through the bank there and they collected from that elevator and then failed; you would have to go in there for your money with all the other creditors of the bank, whereas this gives you a preference.

Mr. WINGO. If you shipped your wheat and drew a draft on the consignee of that car of wheat, the man to whom you are shipping it, it is evident that you are not willing to ship it to him on open account and so you say that you are going to ship it to him with draft and bill of lading attached and send it through a bank, and he will have to go to the bank and pay that draft before he can get the wheat, and if the bank to which you sent your draft with the bill of lading attached permitted the X Milling Co. or this elevator or whoever it was to whom you shipped it to give a check upon that bank or pay cash, then that would be involved in this bill, but that transaction is not the one you have given. The transaction concerning which these millers are complaining is one where the farmer is on the other end of the hot poker. He is the depositor in the country town away from this shipping center, and this proposal is to give the foreign shipper in his community on the processed wheat a preferred claim against the assets of his bank before he, as a depositor, can get at them.

Mr. GRAY. Most of the farmers, as I stated, do their business in selling their crops in a way different from the way I do, because I am so situated that I am almost required to do it as I have related. Most of them go through their local bank, and that local bank sends along the negotiable instrument as required in this bill, and the average farmer would come under the provisions of this bill, even though the method which I described and by which I handle my own business might not come under the bill. But even there I think that I would come under numeral 3 at the end, if something should develop between the Farmers Union Jobbing Association and the purchaser of my wheat.

Mr. WINGO. No; it has been collected in whole or in part by the bank. No. 3 says, "has been collected, either in whole or in part, by such bank," not by the selling agency.

However, the committee has got your idea on that; and I may be wrong about it. But I was interested in another statement you made. You said that the assets of the bank are not added to, because the proceeds of that check do not stay there long enough.

What did you mean by that?

Mr. GRAY. Ordinarily they come in one day and theoretically they go out the same day or the day following in the clearances of the bank one after the other, but practically they do not go out that quickly.

Mr. WINGO. How long, in your opinion, does cash have to stay in a bank to become an addition to the assets?

Mr. GRAY. Just a second.

Mr. WINGO. Have you a different rule out in Kansas than we have in Arkansas?

Mr. GRAY. No; it stays in just as it comes in; but if it is cleared rapidly, as it is added to it is taken away; that is, if it is cleared as rapidly as you described between here and Texarkana. What I have said is manifestly true, that this draft adds to the assets of the bank and immediately subtracts therefrom.

Mr. WINGO. And it immediately becomes a question of book transfer, or to whom they owe the money?

Mr. GRAY. Yes.

Mr. WINGO. And that is a relationship of creditor and debtor?

Mr. GRAY. Yes; but a different relationship than the local depositor has who chooses his agent to do his business for him.

Mr. WINGO. But these millers choose their agents.

Mr. GRAY. Some of them.

Mr. WINGO. Do not all of them do it?

Mr. GRAY. I do not know.

Mr. WINGO. Who makes the selection for them? None of them have ever contended to me that they did not select their own agent. They not only select their own customer, but select their own agent, and they say, "We are not willing to trust our customer and ship on open account, but we are going to send a draft through one of our agents, to make you pay for this wheat before you can get it." So they voluntarily choose the agent, and why should the farmer in your town, because he has voluntarily chosen a bank there for his deposits, be nothing by a general creditor while a milling concern that has shipped a carload of flour with bill of lading attached to that bank becomes a preferred creditor, when it voluntarily selected the same bank as its agent, and old Reuben has to sit bank and take what is left after the man who has voluntarily selected his agent gets his?

Mr. GRAY. There would not be any difference between the two men if the farmer you relate had sent his wheat or whatever it was to market and if the same penalty had attached there as would have attached——

Mr. WINGO. We are talking about the question of agency. Both of them chose their agents, and why should one of them be penalized while another one is given a preference, both having acted voluntarily in choosing their agent?

Mr. GRAY. I do not see that that would happen if the company that shipped the material to or from a terminal market used the same business practices as were used in the other case.

Mr. WINGO. You represent the American Farm Federation Bureau as their legislative agent?

Mr. GRAY. Yes.

Mr. WINGO. Has this bill ever been submittedto your organization?

Mr. GRAY. No, not in full.

Mr. WINGO. Has it in part?

Mr. GRAY. It has been discussed with the legislative committee.

Mr. WINGO. The legislative committee here in Washington?

Mr. GRAY. No, the committee does not stay here, but it comes in periodically, and the committee was here last week.

Mr. WINGO. Has any farm bureau in Arkansas ever approved this bill?

Mr. GRAY. We have no State federation in Arkansas.

Mr. WINGO. They are inactive now?

Mr. GRAY. Yes.

Mr. WINGO. Has any local farm bureau in Arkansas ever considered this bill and indorsed it?

Mr. GRAY. I do not know that any local farm bureau has ever indorsed it. The State Farm Bureau Federation, with offices at Manhattan, Kans., knows of the bill and has commented upon it.

Mr. WINGO. And the milling companies there have probably been very active in their propaganda and brought it to their attention and got them to indorse it.

Are there any lawyers in the Farm Bureau who could understand the legal effect of this language?

Mr. GRAY. In the Kansas State Farm Bureau?

Mr. WINGO. Yes.

Mr. GRAY. They have an attorney who is consulted on questions of a legal nature that they want advice on.

Mr. WINGO. Do you think that this bill was ever submitted to him.

Mr. GRAY. I was about to continue—I do not know whether this bill was referred to him or not.

Mr. WINGO. But you and the legislative committee came to the conclusion—sincerely, of course—that this would help the farmer, and for that reason you appeared here to indorse it?

Mr. GRAY. It will help him directly when he ships his own goods through the routes we have been talking about, and it will help him indirectly by not having the prices of the materials he has to sell beaten down a bit by the people who handle his crops, either locally or through the terminals, millers or otherwise, as a result of their being penalized on account of losses by banks going into bankruptcy, so it will help him directly or indirectly.

Mr. WINGO. That is a fitting climax to your testimony. We have heard that argument before, which means that what the farmer loses as a depositor by having these shippers given a preference against his assets will be more than offset by the general prosperity that will follow through the millers in his territory being saved from their losses on account of being preferred creditors.

That is an argument that does not appeal to an old-fashioned Democrat, but it might appeal to a hard-boiled Republican.

Mr. GRAY. We are not approaching this question politically.

Mr. BRAND. What city did you refer to when you told us that you lived about 100 miles away?

Mr. GRAY. Kansas City, Mo.

Mr. BRAND. Where is the cooperative association located that you referred to?

Mr. GRAY. Do you mean the one to which I ship my wheat?

Mr. BRAND. Yes, sir.

Mr. GRAY. It is in Kansas City, with offices in the Board of Trade Building, Kansas City, Mo.

Mr. BRAND. What reason do they give to you for a week or two weeks delay in sending you a check after a sale is made of your wheat?

Mr. GRAY. I have never asked them for a reason, because the money thus far has always come along in due time. I have never asked the Farmers Union Jobbing Association why it takes that time for me to get my return, and in one case it took two weeks. I have shipped many carloads of hogs to Kansas City, not in the last three or four years, but formerly, and it usually took, even when the hogs were sold to a packer, much of a week to get my check back on a carload of hogs.

Mr. BRAND. If the failure to forward your check amounts to negligence, the person or corporation guilty of such negligence would under present law be liable to you for such injury you may sustain.

STATEMENT OF HANSON McKENNEY

Mr. MCKENNEY. I appear for the Piedmont Millers' Association, comprising flour mills in the Southeastern States.

Mr. STRONG. Where do you have your headquarters?

Mr. MCKENNEY. Richmond, Va.

I have heard the arguments advanced by other representatives of the agricultural and milling interests, and also the questions asked by Mr. Wingo pertaining to the different states of fact, and I would like to invite Mr. Wingo's attention to one decision, if he has not already read it, that of the Federal Reserve Bank of Richmond *v.* Peters et al., 123 Southeastern, 379, in which the Supreme Court of Appeals of Virginia used the language:

> Proceeds of check cashed by correspondent bank held trust funds. Where remittance method was used by two banks, when one bank cashed a check drawn upon itself for its correspondent, proceeds were inpressed with a trust, and relation of debtor and creditor did not arise, though bank retained the actual cash and sent draft to correspondent bank upon deposit in another bank.

Mr. WINGO. That is practically the same case as the First National Bank case down at Little Rock, is it not? Have you read that?

Mr. MCKENNEY. No, sir.

Then it goes on to say:

> The commingling of trust funds with the general fund does not destroy that trust, but serves to extend the trust or lien to the whole mass of money. Equity regards that as done which ought to have been done. In determining whether a failed bank is a debtor or trustee, the courts may look to the intention of the parties.

And they cite that Goodyear Tire & Rubber Co. case as one of their authorities, and to my mind they very clearly indicate that the principle they call attention to would apply to just such a state of facts as this bill would pertain to.

Mr. WINGO. You do not need this bill, then, do you? The court found with you there, did it not?

Mr. MCKENNEY. Not as to national banks.

Mr. WINGO. But both the bank in Kansas and the bank in Little Rock were national banks in the Goodyear Tire & Rubber Co. case, and the Supreme Court there said that the relation of principal and agent and not of debtor and creditor obtained there, and they were treated as preferred creditors and the ablest firm of lawyers in Arkansas represented the bank there and said that they would not appeal to the Supreme Court.

You can find plenty of decisions, but you do not give all the facts in that case. What was the cash position of the bank at the time it failed?

Mr. MCKENNEY. They had sufficient money on hand to remit in this case.

Mr. WINGO. In other words, that case was not any different from the Hanover case or the First National case, was it? As a matter of fact, they cited the Hanover case as the basis for the decision in the Richmond case, did they not?

Mr. MCKENNEY. Yes; they did cite that.

Mr. WINGO. There is no dispute about that; we all agree on that. That is the law now. We do not need an amendment to the statute. Why do you want that decision overthrown when they held in that state of facts that he was entitled to a preference? Are you not running the danger, if you change the statute, that the courts might decide against you the next time? Why do you want to change the law when you have the courts holding with you?

Mr. MCKENNEY. You asked the question, Mr. Wingo, this morning if this case or a case having a similar state of facts had ever gone to the Supreme Court.

Mr. WINGO. No; you did not notice the state of facts I gave. There are several factors that enter into it, and, with respect to the state of facts that was set forth, I still challenge you to show any conflict in the courts on that question, but on this state of facts that you have given, the state of facts in the Hanover case and the First National Bank case, there is absolutely no dispute about that. All that the courts do hold on that state of facts is that the drawer of the draft is entitled to get his money out of the assets the same as a preferred creditor, not because he is a preferred creditor, but because the relation of agent and principal exists and the fund is a trust fund, and therefore he was entitled to have an accounting for that trust fund out of the general assets before the creditors came in. There is no dispute about that; we agree that that is the law now, and you do not need any change for that purpose. The courts are holding with you on that now, so why change the law?

Mr. McKENNEY. Would it not appear that the cases which Mr. Hogueland cited, the Goodyear Tire & Rubber case and the others, were different from this?

Mr. WINGO. No; I think not. I think you will find that in the Richmond case the court cited the Goodyear case as a precedent for its decision, but we can tell as soon as we get it. Do you not have the facts in that case? Do they not cite the Hanover case?

Mr. McKENNEY. They do.

Mr. WINGO. In other words, they used that as a basis?

Mr. McKENNEY. Yes.

Getting down to the question of the various State statutes, the State of South Carolina, in section 2, adopted in 1927, provided that items sent by one bank to another for collection ought to be considered as trust funds.

Mr. WINGO. That is your statute in North Carolina?

Mr. McKENNEY. South Carolina; yes, sir.

Mr. WINGO. Well, as a general proposition, the agent always holds the funds of his principal as a trust. There is no dispute about that.

Mr. McKENNEY. On the precise principle that is set forth in Mr. Strong's bill, there are no court decisions expressly in point, but I recall a few years ago a decision of the Supreme Court of the United States in the Wolf case, reported in 242 United States, which, on a different state of facts, pertained to section 16, the statute of limitations feature of the interstate commerce act. It was a case which arose in Kansas and in which reparation was sought from a common carrier, the Kansas City Southern Railway. The Interstate Commerce Commission awarded reparation by an order which reduced the freight rates and awarded reparation for the difference between the collected rate and the lower rate established by them.

On appeal to the Supreme Court of the United States, Justice McReynolds decided that the statute of limitations destroyed the liability and barred the remedy for all time. Then the Senate Interstate Commerce Committee and the Committee on Interstate and Foreign Commerce of the House approved a bill to offset that—it was Senate bill No. 7204, for I remember the exact number—which revived that destroyed right and also made the bill retroactive to August 6, 1920, and the bill was signed by President Coolidge on June 7, 1924, when it became a law, and the common carriers all over the United States paid out very large sums of money, running very close to a million dollars, to the petroleum industry.

That was cured by congressional enactment. Now as the State supreme courts have dealt with various states of fact, I would think from the equitable viewpoint that the shippers were mainly concerned in this one principle, and inasmuch as you have a precedent in the amendment to section 16 of the interstate commerce act that I referred to, it would seem to me that such enactment as this would serve a very equitable purpose, and I feel that those engaged in the the banking business would not be hostile to any such change as might be effected in this respect.

The common carriers themselves, from my practical experience with the petroleum industry, used this very method of collecting freight charges. I was with the Atlantic Refining Oil Corporation, and we moved a considerable amount of petroleum out of Texas, Kansas, and Oklahoma to eastern points at which there were no arrangements effective for the collection of transportation charges. Upon application to the treasurer of each respective line, that office would in turn instruct the local freight agent to accept a draft from the consignee, and that agent would deposit the draft in a local bank there, which bank would forward it on, to be collected at the city of Baltimore from the depositary bank of the oil corporation. The oil corporation on the receiving end did not know which bank a draft draft would turn up in. Oftentimes it turned up at four different banks.

So the carriers used that method to collect their transportation charges, and while, of course, the oil was not always shipped with the bill-of-lading attached, in a great many instances it was.

While, as you have very well stressed, there are fine points of distinction between a general creditor and a shipper who is under the belief that he is using his bank as an agent to collect, I think that the equitable viewpoint would favor this bill. I realize that Mr. Pratt tried to bring out the theory that what is sauce for the goose ought to be sauce for the gander, but I do not think so.

Mr. WINGO. That is like the law of supply and demand; we repealed that long ago. This bill is just one of a cumulative series of that kind of thing.

Now I have the Richmond case before me, and this refreshes my recollection that that was the case where a batch of checks was sent to a member bank, and before the draft was covered and that whole batch of checks was presented, the bank failed.

You do not think that that supports this bill, do you?

Mr. McKENNEY. No, sir; not in its entirety.

Mr. WINGO. Not directly?

Mr. McKENNEY. No, sir.

Mr. WINGO. The reason I mentioned that is that it accentuates this fact that I have tried to get some of you gentlemen to see, that in the last analysis it is a question of what the facts are in each particular case. There is no dispute about the principle.

I do not say that there is not any such decision, but in my study of this question at odd moments, nowhere have I found a real conflict in the legal principle that is applied by any court. Whenever you find an apparent conflict, if you look at the state of facts you will find that there were conflicting facts in the different cases. The syllabi sometimes look like there is a conflict in the law, but when you get down and study it you will find that there was a different set-up of the major factors that controlled whether it was a case of principal and agent or creditor and debtor.

Had you thought about this? Suppose that we undertook to say that the only rule of the Federal Government governing national banks on a question of this kind shall be this rule. There is an old maxim that I used to hear when I was studying law about the inclusion of one excluding the others. What is that Latin maxim? Some of these experienced lawyers will remember that expression.

Mr. BARSE. Expressio unius est exclusio alterius.

Mr. WINGO. Had you thought about that? Had your attention been called to that? If you are going to say what state of facts constitutes a preferred creditor, will that mean that the courts will apply that maxim with reference to other practices and say that, not having been referred to here, Congress intended to exclude that

kind of a proposition as a preferred creditor? Had you thought about that?

Mr. McKENNEY. That is true. It is subject to review the same as that Senate bill 7204 was.

Mr. WINGO. Of course, by bringing that out, that it is subject to a court review, a great many people think that that is the salvation of the country, but that is not an argument in favor of this bill. What I want you gentlemen to do is to snow me where a real trust relation existed and where some court held that where there is a trust relation the trust fund should be treated as general assets and the owner of the trust fund has to take potluck with the general creditors. Then I will undertake to talk to you about overriding the courts. You have not that decision, have you?

Mr. McKENNEY. No, sir.

Mr. WINGO. That is all.

STATEMENT OF GEORGE CURTIS SHINN, OF WASHINGTON, D. C.

Mr. SHINN. Mr. Chairman and gentlemen of the committee, I received a letter a few days ago from Mr. W. Randolph Montgomery, general counsel of the National Association of Credit Men, with headquarters at New York City. I happen to represent them here. This association is composed of constituent memberships and associations of several hundred, and has an individual membership of about 25,000 or 30,000 throughout the United States, composed of shippers, manufacturers, bankers, and business men in general.

I only received his letter a day or two ago. He expected to be here himself, but he is attending a convention at Dallas, Tex., and he requested me to appear before the committee and state briefly the attitude of our association.

I am not prepared to discuss the subject intelligently, having had no opportunity to investigate it, although I have been very much edified and entertained by this discussion.

There is both support and opposition to this bill among the members of the National Association of Credit Men. The opposition is based largely, I am told, upon the belief that the bill is too narrow in its application, and that while it is good as far as it goes, it should not be restricted to the particular class of transactions which is embraced in it as drawn at the present time.

The thought is that the whole subject might well be gone into and a bill drawn that would meet all possible viewpoints in the situation. Particularly, Mr. Montgomery suggested that the bill should be amended to embrace substantially the provisions of section 13 of the bank collection code recommended by the American Bankers Association. Mr. Hogueland mentioned section 13 of this code, and had it read into the record, paragraph 3, and I will suggest that perhaps paragraphs 1, 2, and 3 might be incorporated, because they might be more or less pertinent to the subject.

Mr. HOGUELAND. The whole code was put in this morning.

Mr. SHINN. I did not know whether it was going to be all copied in.

Mr. WINGO. We put the whole code in. It is something that has been considered by the different legislatures and that has been adopted by a great many States, and so we put it all in.

Mr. SHINN. All right; if the whole thing is in, it will answer the purpose.

I had understood that representatives of the American Bankers Association would be here. I do not believe they are here, although I had understood that Messrs. Paton and Paton, attorneys for that association, had sent some suggestions here.

Mr. STRONG. I will offer them for the record.

Mr. SHINN. Now, collections are a very important part of the setup of a successful institution, the facility of collections throughout the country, and also in the interest of uniformity of practice it was thought that a bill might be drafted that would cover the situation in so far as the Federal legislation was concerned. After all, the object, it seems, is to safeguard the collection of drafts and bills of exchange and other items, and to impress upon all the quality of a trust, so that in all events the forwarder of the item will get his money.

There seems to be some misunderstanding about the various decisions of the courts, but I will agree with Mr. Wingo that it is largely a question of getting to the facts in each particular case. Some of the courts seem to hold that these items that are forwarded are impressed with a trust, and some of them hold that they never became a part of the assets of the collecting bank, and some of them hold that they augment or have augmented the assets of the bank. Whatever may be the reasoning, the avenues of thought have all led to decisions which are favorable to the purposes of this bill, although, as I understand it, there are some decisions to the contrary in some of the State courts.

We see no reason for confining the provisions of the bill to those cases where there is a bill of lading or documentary evidence of title attached, because the principle is what is desired, a principle that would govern all forwarding of items for collection, regardless of whether they are accompanied by documentary evidence of title or otherwise, and it should extend to the protection of all classes of cases, even to cases where the goods had to be sent to the consignee and credit given and afterwards a draft has been drawn for the purchase price.

I believe that is all I have to say.

Mr. WINGO. Right on the last point, as a matter of fact the courts have held that where the Cox Wholesale Feed Co. shipped a carload of feed to J. M. Yard and sent him a bill of lading under a contract, Yard acted as the agent of Cox and that the proceeds of the sale should be considered the property of Cox. The courts have held that that is a trust fund, a commingling of the assets from the sale of those goods retail day by day, that is, general retail sales—that notwithstanding that fact it was a trust fund and Cox could recover from the funds in the bank in Yard's name.

They have gone that far, have they not?

Mr. SHINN. Yes. All the courts have not gone that far, however. They have held quite often that where there has been a commingling of funds and a confusion of assets, that the creditor is helpless to recover.

Mr. WINGO. That is where there has been an assignment of merchandise and a commingling of merchandise, but where there are funds in the bank and you can show that they took the proceeds of the sale of the trust goods along with the proceeds of the sale of other

goods and deposited them in the bank, and there are several funds in that deposit, the courts have held that they can take them.

That is my recollection; I may be wrong about it.

Mr. SHINN. I think they have.

Mr. WINGO. The whole thing comes down to this in the last analysis, that in all of these decisions the question is, do the facts in this particular case constitute a relation of principal and agent, or do they constitute a relation of debtor and creditor? That is the sole test, is it not?

Mr. SHINN. Yes, it is; to ascertain whether or not it is a trust fund.

Mr. WINGO. I say that is the sole test. If the facts show that it was a trust fund, can you give me a single reference to a situation where a court has ever refused to let a man who is entitled to that fund have it?

Mr. SHINN. Well, only to this extent, that they have refused to call it a trust fund.

Mr. WINGO. But what you want to do now is to say that certain facts shall constitute a trust arrangement regardless of collateral facts that enter into it.

Mr. SHINN. I see your point there.

Mr. WINGO. That is the objection I have to your bill.

Mr. SHINN. I was interested in the discussion of the various court decisions. For instance, this Oklahoma Supreme Court said that—

> Where a bank accepts drafts for collection under the express condition of collection and remittance and receives in payment of such drafts check drawn upon itself by drawee of the draft, who has ample funds in deposit to pay his check, and the bank has ample funds to pay the check, the transaction is the same as though the bank had actually received cash in payment of the draft. The assets of the bank being thus augmented, the amount of such draft in such sum as so collected is a trust fund and so a preferred claim.

Mr. WINGO. There is no conflict of decision on that. The courts all agree to that.

Mr. SHINN. Yes; if they find that it is a trust fund, but some courts have taken the same state of facts and said it was not a trust fund.

Mr. WINGO. Give me the courts.

Mr. SHINN. According to the statement Mr. Hogueland made here.

Mr. WINGO. I challenge you to show me any court that, on a state of facts like that, held that it is not a trust fund. I am familiar with that Oklahoma case.

Mr. SHINN. Now, in arriving at that, they say that the funds have been augmented. But, take a case where the collector of the bank goes outside and collects the funds from some other source, or from the debtor himself; they hold that it is impressed with a trust because it never got into the assets of the bank.

Now, it seems to me that in a case where the bank simply goes to the debtor who happens to be a depositor and says, "Here is a draft," and the depositor says, "All right; here is a check on your bank for those funds covering it," that that is a situation where the relation of debtor and creditor existed between the bank and that depositor. We will say that it amounts to $50, and at the time he gives a check for $50. That wipes out that account, and immediately a new account is set up, which is impressed with a trust and the relationship of principal and agent applies to that fund of $50, the bank being the agent and the forwarder being the principal, so it would seem to me

that it would not be a question of augmenting the funds of the bank, because the funds were never in the bank when it failed, because this transaction converted it from a deposit into a trust fund. That is just a notion of mine. However, the courts all get to the same practical result, but the point I wanted to bring out was this, that the depositor has not been hurt any, because if the funds augmented the assets of the bank or if the funds were not there and had been put in a trust fund, then the depositor has not been hurt at all.

Mr. WINGO. There is not any dispute about that.

Mr. SHINN. I thought there was.

Mr. WINGO. You do not need this bill to give you relief on that. The courts have given you relief in that kind of a case. Whether the assets have been augmented is one of the tests.

Mr. SHINN. Yes.

Mr. WINGO. And the fact that it has not been paid in cash or may have been paid by check is not the sole factor in determining whether the transaction is a trust transaction.

Mr. SHINN. Oh, no.

Mr. WINGO. That is where the confusion arises. In some cases they found that there was actual cash paid in and in some others the opposite was true, so some people jumped to the conclusion that that was the determining factor. It was not. Maybe there was some other factor in there, because you can find cases where cash was actually paid and yet under the same state of facts you apparently got a conflicting decision, but you will find that there was another factor in there which was different. You are undertaking to pick out just one state of facts and say that in that particular state of facts it does not constitute a trust transaction and that therefore we should by legislative enactment make an addition to the law.

Mr. SHINN. I think that the attitude of our association toward the bill is that it should be gone over very carefully before it is finally made into law, but they are in favor of the general purposes of the bill.

Mr. WINGO. You may be sure that that will be done. It will be gone into very carefully.

Mr. STRONG. Yes; you can tell them that that is the purpose of the committee.

Mr. WINGO. You can tell them that that is the mean way that this committee has, of scrutinizing bills before it.

Mr. STRONG. In accordance with the agreement this morning, I desire at this point to have inserted in the record the names and addresses of individuals, firms, and others who have indorsed the bill under consideration.

(The names referred to are as follows:)

Board of directors, Salina Chamber of Commerce, J. R. Geis, president.

Farmers National Grain Corporation, Chicago, Ill., L. E. Webb, secretary-treasurer.

Iowa Bankers Association, Des Moins, Iowa, Frank Warner, secretary.

Arkansas Bankers Association, Little Rock, Ark., Robert E. Wait, secretary.

Farmers National Grain Dealers Association, Omaha, Nebr., J. W. Shorthill, secretary.

North Dakota Bankers Association, Fargo, N. Dak., W. C. Macfadden, secretary.

The Kansas Grain Co., Hutchinson, Kans., R. Dunmire, manager.

National League of Commission Merchants of the United States, Washington, D. C., E. L. Roberts, general manager and secretary.
Farmers Elevator Association of Nebraska, cooperative, Omaha, Nebr., J. W. Shorthill, secretary.
S. A. Coykendall & Co., New York City, S. A. Coykendall, vice president.
Equity Union Grain Co., Kansas City, Mo., J. J. Knight, general manager.
Ballard & Ballard Co., Louisville, Ky., David C. Morton, president.
Grain and Feed Dealers National Association, West Chester, Pa., James L. King, chairman of legislative committee.
Southern Mixed Feed Manufacturers Association, Memphis, Tenn., E. P. MacNicol, secretary.
The National Fertilizer Association, Washington, D. C., Charles J. Brand, executive secretary and treasurer.
The Dewey Bros. Co., Blanchester, Ohio, L. W. Dewey, president and general manager.
National Association of Furniture Manufacturers (Inc.), Chicago, Ill., A. P. Haake, managing director.
National Soft Wheat Millers' Association, Nashville, Tenn., W. H. Strowd.
The Shellabarger Mill & Elevator Co., Salina, Kans., J. B. Smith, general manager.
Austin-Heaton Co., Durham, N. C., W. M. Speed, president.
The Anthony Mills, Anthony, Kans., C. E. Mallon, manager.
The Alva Roller Mills, Alva, Okla., L. B. Hart, manager.
The Cherokee Mills, Cherokee, Okla., Nix Anderson, manager.
The Kansas Flour Mills Corporation, Kansas City, Mo.
Flour Mills of America (Inc.), Kansas City, Mo., T. L. Hoffman, president.
The J. C. Lysle Milling Co., Leavenworth, Kans., E. D. Lysle, president.
The Abilene Flour Mills Co., Abilene, Kans., T. L. Welsh, manager.
Russell-Miller Milling Co., Minneapolis, Minn., W. C. Helm, general manager.
Fisher Flouring Mills Co., Seattle, Wash., O. L. Wood, credit manager.
Statesville Flour Mills Co., Statesville, N. C., F. A. Sherrill, secretary and treasurer.
Allentown Chamber of Commerce, Allentown, Pa., W. Clearwater, manager.
The Hoover Co., North Canton, Ohio, J. D. Cathon, credit manager.
The commercial National Bank, Kansas City, Kans., C. L. Brokaw, president.

Mr. STRONG. At this point I want to insert in the record a letter received by the chairman of the committee from Mr. Thomas B. Paton, general counsel of the American Bankers Association.

(The letter referred to is reproduced below; and the code to which reference is made is embodied as a part of Mr. Hogueland's testimony hereinbefore recorded.)

NEW YORK, *May 14, 1930.*

Hon. L. T. MCFADDEN,
Chairman Committee on Banking and Currency,
House of Representatives, Washington, D. C.

DEAR MR. MCFADDEN: As it will be impossible for me to be personally present at the hearing upon this bill on May 16, I would like to have inserted in the record that the American Bankers Association has, as yet, taken no position with reference to this bill, either favorable or opposed.

The bill applies to the situation where a national bank receives for collection a draft drawn against the delivery of an accompanying document of title and after collection of the proceeds in whole or in part, goes into the hands of a receiver. In such event, the transferor of the draft is made a preferred creditor in the assets of the failed bank, unless the transferor is a depositor and the amount has been credited to his account, when he becomes a general creditor.

It will be observed that the bill applies to only one class of draft, those accompanied by documents of title; it does not reach the class of cases where a national bank receives for collection an ordinary check or draft when not accompanied by documents of title and fails after collecting the proceeds. It would, therefore, prefer the transferor of the documentary draft and omit to prefer the transferor of an ordinary draft.

In this connection, I would refer to the Uniform Bank Collection Code (copy herewith) which was drafted jointly by myself any my son and recommended by the American Bankers Association for enactment by legislatures of the different States. It has been enacted in 1929 by the legislatures of the nine States of Indiana, Maryland, Missouri, Nebraska, New Mexico, New Jersey, New York, Washington, Wisconsin, and in 1930 by the legislatures of Kentucky and South Carolina. Section 13 of this code regulates the subject of insolvency of collecting banks and preferences and it is respectfully requested that consideration be given to the provisions of this section as the basis for a Federal enactment which would provide preferred claims against national banks which collect items and fail before the proceeds are remitted. The provisions of the code are based upon the theory that a collecting bank is a trustee and not a debtor for the proceeds and they would apply to all items forwarded for collection instead of, as in H. R. 5634, singling out a special class for preferential treatment.

Without committing the American Bankers Association which, as said, has not, as yet, taken any stand upon H. R. 5634, the thought in my mind, is that if the matter of protection to owners of items in case of failure of collecting banks is to be regulated at all, it should be more completely regulated as is done in the Uniform Bank Collection Code rather than partially regulated with reference to a particular class of transactions.

Very truly yours,

THOMAS B. PATON,
General Counsel American Bankers Association.

(See testimony of E. H. Hogueland for copy of Bank Collection Code.)

Mr. STRONG. Mr. Fakler, do you want to be heard before we hear the representatives of the Treasury in opposition to the bill?

Mr. FAKLER. No; I can wait.

Mr. WINGO. I think he ought to be given a chance to be heard in preference to the gentlemen from the Treasury Department.

Mr. FAKLER. I am here in Washington.

Mr. WINGO. I thought you had come from a distance.

Mr. STRONG. His statement is in line with the others.

Mr. FAKLER. Just put it in the record, if you want to.

Mr. STRONG. Very well.

(The statement submitted on behalf of the Millers' National Federation is as follows:)

STATEMENT OF THE MILLERS' NATIONAL FEDERATION

The Millers' National Federation is the national trade association of wheat flour millers in the United States. Its membership comprises approximately 250 individual milling companies operating some 300 mills located in 31 States. These mills produce annually from 65 to 70 per cent of the total amount of wheat flour produced by all mills in the United States. The Bureau of the Census report for 1927 shows the industry produced 118,132,027 barrels of wheat flour, valued at $820,273,389. The total value of all products produced by the industry in 1927 was $1,148,760,360. The monthly census reports for 1929 indicate a total production of 122,276,226 barrels.

At its semiannual meeting, held in Chicago, Ill., November 15–16, 1928, the federation adopted a resolution indorsing a bill introduced in the House of Representatives by Hon. James G. Strong of Kansas, entited "A bill to provide that transferors for collection of negotiable instruments shall be preferred creditors of national banks in certain cases." A similar bill, known as H. R. 5634, has been introduced in the House by Congressman Strong in the present Congress, which is the bill now before your commitee.

Wheat flour is almost universally sold on signed contracts for future delivery and manufactured by the miller in response to shipping directions given by the buyer. The best figures we can obtain indicate that on an average approximately 80 per cent of all flour sales are made on the basis of sight or arrival draft with bill of lading attached. When, under a specific contract, the buyer orders a carload of flour shipped to him on sight draft, he may designate the local bank through which he desires the draft presented. If he does so designate the collecting bank, the buyer agrees in the contract to become responsible for payment, and the miller is protected in the event of involvency of the collecting bank before remittance is completed.

However, in many cases the buyer does not designate the collecting bank and the miller makes the selection himself or his bank makes the selection. Of

course, the miller or his banker exercises every precaution in selecting the strongest available bank for collection of his draft, but often he does not have a choice and must use a bank that involves a risk. Even the strongest bank might also carry a similar risk, so that the miller needs some protection or assurance that he will receive the full proceeds of his draft. The banks make a definite charge for this collection service. The miller employs the collecting bank for a specific purpose, namely, to deliver his document of title to his property upon the payment of the draft accompanying the document. There is no reason, therefore, for the collection funds being mingled with the general assets of the bank, and the miller in employing the collecting bank does not intend that they should be so mingled.

The first step, therefore, in assuring to the miller the full proceeds of his draft is to establish the collection as a trust fund. Upon advice of counsel, millers have almost universally printed the following notation, or one having the same effect, on the face of drafts placed for collection:

This draft is a cash item and is not to be treated as a deposit. The funds obtained through its collection are to be accounted for to us, and are not to be commingled with the other funds of the collecting bank.

The Supreme Court of the State of Oklahoma (Kansas Flour Mills Co., *v.* New State Bank of Woodward, 256 Pacific, 43) took the position that when the collecting bank accepted a draft for collection under the condition named in the above statement, the bank acted as agent for the miller. The court rendered a verdict in favor of the miller, and definitely decided that funds collected in this manner are to be considered as trust funds.

While there is no unanimity of opinion in the decisions of the State courts, and apparently each case is decided on its particular facts, we understand most of the State courts hold that the relationship between drawer of the draft and the collecting State bank is one of principal and agent, and that the funds, after collection by the collecting bank but before remittance to the drawer constitute a trust fund in the hands of the collecting bank for the benefit of the drawer. In order that we might have accurate information on the existing State statutes and court decisions, we communicated with the State Bankers Association, and I attach hereto as Exhibit A for the information of the committee a summary of information received from 15 States. We did not receive replies from the States not listed.

In addition, we are informed that the bank collection code recommended by the American Bankers Association has been enacted into law in the following 12 States: Indiana, Kentucky, Maryland, Missouri, Nebraska, New Mexico, New Jersey, New York, South Carolina, Washington, Wisconsin, and Wyoming. I attach herewith as Exhibit B, a copy of section 13 of this code, on insolvency and preferences.

In spite of our own efforts and in spite of these favorable State court decisions and statutes, within recent years millers have been constantly faced with losses resulting from insolvency of collecting State and National banks, the receivers of which have refused to recognize the miller's claim for the full amount of the proceeds of the draft, even though the existence of the trust fund was recognized. The basis for this is found in decisions of the Federal courts, the principal decision apparently being Ellerbe *v.* Studebaker Corporation (21, Fed. 2d, 993).

The Comptroller of the Currency in his administration of the affairs of national banks has necessarily conformed his practice to the terms of these decisions, and in the event of insolvency of a national bank the forwarder of a draft to such national bank for collection and remittance, providing remittance is not completed before the bank becomes insolvent, is not entitled to the full proceeds of his draft, unless the following three essential elements are present—

1. A trust relationship must have existed between the forwarder and the collection bank which did not contemplate that the funds collected should be commingled with the general assets of the bank.
2. The assets of the bank were augmented by the transaction in question.
3. The funds collected can be traced into the hands of the receiver and there identified.

The Comptroller of the Currency has been good enough to indicate in detail how these elements operate, and I quote the following for your information.

"Where it is clear that an item was sent for collection and remittance only, such a transaction establishes the first element of a trust relationship, and if the collecting bank collects the item in cash, then the second element of augmentation has been established. But if the item is drawn on another bank and the difference between the clearings in said other bank and the collecting bank is against the collecting bank then it can not be said that the item has been traced into the hands of the receiver in order to fulfill the third required element inasmuch as the receiver took nothing by reason of the transaction. Or if the item is paid by the receipt of the collecting bank of a check drawn against the account of one of its customers or depositors, then it can not be said that the assets of the bank were augmented in any way since such transaction merely amounts to a shifting of debits and credits, under existing Federal court decisions. Also, there can be no tracing of funds as required by the third element above mentioned where the proceeds of the collection have been dissipated by the collecting bank prior to suspension, inasmuch as the receiver takes nothing by reason of such dissipation. And in the case where the collecting bank attempts to remit by its own draft, and such remittance draft is caught in suspension, in such cases it is necessary to prove the existence of the three required elements above referred to before a recovery of the collected fund can be had as a preferred claim."

In the practice and procedure with reference to national banks, the Comptroller is generally followed in the case of State banks by those States that do not have specific statutes or court decisions on the subject.

Under these conditions, I believe it will be apparent that the only element over which the miller has any control is the establishment of the trust fund, and that even when this has been established it is practically impossible to prescribe any further formula whereby the miller, or other forwarder of a draft, for collection, can under existing procedure be assured of the receipt of the full proceeds of such item when it has been collected but remittance not completed by the collecting national bank. The above procedure in our opinion forces the shipper into a debtor and creditor relationship with the collecting bank, which relationship was never contemplated. It is our opinion that the general creditors or depositors of a bank are not interested in such a transaction, and that when an individual depositor pays a draft by check on his account in the collecting bank, he intends that his account shall be reduced by that amount, and that he expects in turn the general assets of the bank will be reduced by that amount. It seems quite inconsistent to us that when the trust fund has been established the miller must further show that the payment of the draft augmented the assets of the collecting bank, whereas the intention of the person paying the draft was that his account and the assets of the bank were to be reduced by the transaction.

According to the report of the Comptroller of Currency for 1929, during the period 1914 to 1929, inclusive, there were a total of 5,381 bank failures in the United States, of which 4,284 were State banks, 337 were private banks and 760 were national banks. Since the first national bank failure in 1865, 1,313 national banks were placed in charge of receivers. Of this number 72, or 5.5 per cent, were restored to solvency, leaving 1,241 to be administered by receivers. Of these 1,241 banks so administered, 426 are still in process of liquidation, and 815 have been entirely liquidated and the trusts closed.

Analyzing the per cent of dividends paid to creditors of 105 insolvent national banks, the affairs of which were either closed or restored to solvency during the year ended October 31, 1929, we obtain the following interesting information:

The same information could be compiled for all national banks now in the hands of receivers, but I believe this is sufficient to indicate the situation.

Per cent of dividends paid to creditors of 105 insolvent national banks, the affairs of which were either closed or restored to solvency during the year ended October 31, 1929

[Source: Annual report of the Comptroller of the Currency, December 2, 1929]

Per cent of dividends paid	Banks	
	Number	Per cent of total
Less than 10 per cent	6	5.7
10–20 per cent	15	14.3
20–30 per cent	10	9.5
30–40 per cent	14	13.3
40–50 per cent	10	9.5
50–60 per cent	12	11.4
60–70 per cent	11	10.5
70–80 per cent	9	8.6
80–90 per cent	5	4.8
90–100 per cent	4	3.8
100 per cent and over	9	8.6
	105	100.0

Recapitulation

	Per cent
5.7 per cent of banks paid dividends below	10
20 per cent of banks paid dividends below	20
29.5 per cent of banks paid dividends below	30
42.8 per cent of banks paid dividends below	40
52.3 per cent of banks paid dividends below	50
63.7 per cent of banks paid dividends below	60
74.2 per cent of banks paid dividends below	70
82.8 per cent of banks paid dividends below	80
87.6 per cent of banks paid dividends below	90
91.4 per cent of banks paid dividends below	100

NOTE.—Two banks paying 100 per cent dividends restored to solvency; 9 banks in which receivers were appointed to levy and collect stock assessments covering deficiency in value of assets sold; 4 banks, principal and interest paid in full; 1 bank, 100 per cent dividends paid by purchasing bank; and 2 banks paying 100 per cent dividends not restored to solvency.

Over half of these banks paid less than 50 per cent dividends, so that millers who might have been unfortunate enough to have had drafts for collection in these banks would have realized less than 50 cents on the dollar on the proceeds of their draft, unless all of the elements previously enumerated by the comptroller were present in the transaction.

Members of the Millers' National Federation, as the result of the existing situation, have suffered heavy losses, and have reported to us losses in the past three years totaling $42,129.12. I believe, however, the actual losses have been very much greater than this amount. A detailed statement of the individual losses reported is attached hereto as Exhibit C.

It is the firm conviction of millers, therefore, that adequate protection should be afforded for the perfectly legitimate and sound business practice involved in the collection of drafts, notes, etc., so that business generally will have increased confidence in its use and continue to enjoy the advantage which it affords without being compelled, as it is in many instances, to go to court in a complicated case to recover what is rightfully its own property, and then probably only receive a small fraction of it.

It is our further belief that the Strong bill now before your committee is equitable from the point of view of all concerned and adequately covers the situation. The bank collection code recommended by the American Bankers' Association, we are advised, goes somewhat further in its provisions relating to collections and insolvency than the Strong bill, and it may be the committee will want to consider that in connection with the bill. However that may be, wheat flour millers of the United States are unanimous in their indorsement of the principles and provisions embodied in the Strong bill, and in their behalf we respectfully urge your favorable consideration of this legislation.

EXHIBIT A

ARKANSAS

State laws do not set up class of preferred creditors as is contemplated in the Strong bill. The following courts decisions, however, are cited in this connection:

Theory of preference for trust funds.—The mere fact that insolvent banks owes one for trust funds does not alone entitle such creditor to preference. To get preference, he must show that the receiver of the insolvent bank has in his hands some of the trust funds or property into which such funds have been changed. He gets a priority only to such extent as he can identify his property in original or substitute form. (Rainwater *v.* Wildman, 172 Ark. 524; Hill *v.* Miles, 83 Ark. 487.)

Proceeds of collections.—Where bank receives draft for collection merely, it is agent of remitter, drawer or forwarding bank, and takes no title to the paper, or the proceeds when collected, but holds the same in trust for the purpose of remitting. The owner of the proceeds of such draft, therefore, is a preferred creditor of the bank. (Rainwater *v.* Federal Reserve Bank, 172 Ark. 632; Darragh Co. *v.* Goodman, 124 Ark. 550.)

Bank mingling trust funds with its own funds.—Where bank has mingled trust money with its own funds, money paid from such conglomerate fund for its own purposes will be presumed to have been paid from its own money and not from the trust funds; but where the mingled fund is at any time reduced below the amount of the trust fund, the latter must be regarded to that extent as dissipated, and the sums subsequently added from other sources can not be treated as part of the trust fund. (Covey *v.* Cannon, 104 Ark. 550.)

National banks.—State can not establish priority of claims against insolvent national bank in a manner conflicting with Federal Statute. (Chas. Davis *v.* Elmira Savings Bank, 161 U. S. 276, 40 Law Ed. 700.)

CALIFORNIA

The only decision upon this subject in California holds that a remittance draft for collection is not a preferred claim against the collecting bank. It would make no difference, therefore, whether the assets of the banks had been augmented or increased by the collection or whether the proceeds of the collection were traceable into the hands of the receiver. Where the proceeds of the collection have not been remitted, the question as to whether the person who had forwarded the collection would be entitled to preference would depend entirely upon the circumstances of the case, the instructions given, the relation between the parties, the augmentation of funds and the ability to trace the funds into the hands of the receiver.

FLORIDA

By decision of the Florida State Supreme Court all items collected by a closed institution are preferred.

GEORGIA

Banking act of Georgia amended as follows in August, 1927:

"SEC. 19. *Order of paying debts.*—After the payment of the expenses liquidation, including compensation of agents and attorneys, and after the payment of unremitted collections, the order of paying off debts due by insolvent banks shall be as follows: (1) Debts due to depositors; (2) debts due for taxes, State and Federal; (3) judgments; (4) contractual obligations; (5) unliquidated claims for damages and the like: *Provided*, That nothing herein contained shall affect the validity of any security or lien held by any person or corporation."

INDIANA

General practice in Indiana is to allow preference in cases similar to the preferences contemplated in the Strong bill, on the theory that the proceeds constitute a trust fund. State legislature has enacted the bank collection code of the American Bankers' Association as a State statute.

IOWA

Following is an extract from the new Iowa Banking law, April 17, 1929:

"SEC. 11. *Making bank drafts and cashiers' checks preferred.*—Any draft, or cashiers' check issued and drawn against actual existing values by any bank or trust company prior to its failure or closing and given in payment of clearings and any money paid in the usual course of business to any bank, or trust company for the purchase of a draft for the bona fide transfer of funds shall be a preferred claim against the assets of the bank or trust company."

This is interpreted in actual practice to accomplish two things: (1) Prefers drafts and cashiers' checks given for clearings between banks; (2) prefers funds that are used to buy bank drafts for the transferring or transportation of money.

MINNESOTA

In Minnesota the class of creditors contemplated by the Strong bill are not preferred and generally speaking the State banking department, having charge of all closed State banks, follows the rule practiced by the Comptroller of the Currency.

NORTH CAROLINA

Extract from State banking law. Part of section 218 (c) (14), relating to preferences:

"The following shall be the order and preference in the distribution of the assets of any bank liquidated hereunder: (1) Taxes and fees due the corporation commission for examination or other services; (2) wages and salaries due officers and employees of the bank, for a period of not more than four months; (3) expenses of liquidation; (4) certified checks and cashiers' checks in the hands of a

third party as a holder for value and amounts due on collections made and unremitted for or for which final actual payment has not been made by the bank; (5) amounts due creditors other than stockholders. The word "asset" used herein shall not be deemed to include bailments or other property to which such bank has no title: *Provided*, That when any bank, or any officer, clerk, or agent thereof, receives by mail, express or otherwise, a check, bill of exchange, order to remit, note or draft for collection, with the request that remittance be made therefor, the charging of such item to the account of the drawer, acceptor, indorser, or maker thereof, or collecting any such item from any bank or other party, and failing to remit therefor, or the nonpayment of a check sent in payment therefor, shall create a lien in favor of the owner of such item on the assets of such bank making the collection, and shall attach from the date of the charge, entry or collection of any such funds.

NORTH DAKOTA

In general, the practice and the statutes follow the present practice of the Comptroller of the Currency under Federal statutes and decisions.

RHODE ISLAND

Have no determined practice. Refer questions as they come up to counsel for determination, and advice as to State and National legislation affecting banking.

SOUTH CAROLINA

State statute enacted in 1927. Extract as follows:

"SEC. 2. Items sent by a bank, whether located within or without the State of South Carolina, to a bank in South Carolina for collection, are hereby declared to be a trust fund, and shall be a prior lien on any unassigned assets of such collecting bank."

Am advised that this statute has not yet been interpreted by the State supreme court. Prior to the passage of this statute, the law in South Carolina as to preferred claims in insolvent State banks did not allow preference unless the assets were increased by the collections.

The uniform collection code suggested by the American Bankers Association has been enacted by the State legislature as a State statute.

TENNESSEE

Tennessee State laws do not set up any preferred class of creditors in case of insolvent banks, but by court decision of several years ago, State deposits are preferred. Otherwise, all creditors are on the same basis. Superintendent of banks automatically becomes receiver for any bank under his supervision that may close its doors.

WASHINGTON

State legislature in 1929 adopted the uniform collection code sponsored by the American Bankers Association. General opinion in that State is that code applies to national banks as well as to State banks, but this question has not been judicially determined so far as we are advised.

WISCONSIN

Statute adopted in 1929. Provides that upon suspension of any State bank, all drafts in transit are to be paid upon presentation to the drawee bank. If there are not enough funds on deposit in such drawee bank, by reason of set-off against bills payable, such drafts shall be preferred claims. In practice, these drafts are paid as soon as they are presented to the commissioner of banking or his deputy. When collections are sent to a bank, collection having been made, but no remittance made before suspension, the commissioner does not feel such collection should be preferred, unless a trust can be established and the money absolutely identified.

WYOMING

Through the efforts of the legislative committee of the Wyoming Bankers Association, at the last session of the State legislature a bill was passed known as chapter 141 of the session of Laws of Wyoming, 1929, that goes further than the proposed Strong bill. Under the Wyoming law, items sent in for collection to any bank or trust company in Wyoming are, in event of insolvency of said

bank or trust company, preferred claims. If the items have cleared and been charged against the depositor of the insolvent bank and the draft or check issued by the insolvent bank in payment thereof has been dishonored, such dishonored draft or check is likewise a preferred claim.

There is some question as to whether the above law will hold in a case of a failed national bank, but on the other hand it is generally believed in Wyoming that national banks can take advantage of the statute in case they hold drafts of a defunct State bank. No judicial construction on this point, but legal opinion is that the courts would so hold.

EXHIBIT B

BANK COLLECTION CODE

(Recommended by the American Bankers Association)

SEC. 13. *Insolvency and preferences.*—1. When the drawee or payor, or any other agent collecting bank shall fail or be closed for business by (official to be designated) or by actionof the board of directors or by other proper legal action, after an item shall be mailed or otherwise entrusted to it for collection or payment but before the actual collection or payment thereof, it shall be the duty of the receiver or other official in charge of its assets to return such item, if same is in his possession, to the forwarding or presenting bank with reasonable diligence.

2. Except in cases where an item or items is treated as dishonored by nonpayment as provided in section 11, when a drawee or payor bank has presented to it for payment an item or items drawn upon or payable by or at such bank and at the time has on deposit to the credit of the maker or drawer an amount equal to such item or items and such drawee or payor shall fail or close for business as above, after having charged such item or items to the account of the maker or drawer thereof or otherwise discharged his liability thereon but without such item or items having been paid or settled for by the drawee or payor either in money or by an unconditional credit given on its books or on the books of any other bank, which has been requested or accepted so as to constitute such drawee or payor or other bank debtor therefor, the assets of such drawee or payor shall be impressed with a trust in favor of the owner or owners of such item or items for the amount thereof, or for the balance payable upon a number of items which have been exchanged, and such owner or owners shall be entitled to a preferred claim upon such assets, irrespective of whether the fund representing such item or items can be traced and identified as part of such assets or has been intermingled with or converted into other assets of such failed bank.

3. Where an agent collecting bank other than the drawee or payor shall fail for be closed for business as above, after having received in any form the proceeds of an item or items entrusted to it for collection, but without such item or items having been paid or remitted for by it either in money or by an unconditional credit given on its books or on the books of any other bank which has been requested or accepted so as to constitute such failed collecting or other bank debtor therefor, the assets of such agent collecting bank which has failed or been closed for business as above shall be impressed with a trust in favor of the owner or owners of such item or items for the amount of such proceeds and such owner or owners shall be entitled to a preferred claim upon such assets, irrespective of whether the fund representing such item or items can be traced and identified as part of such assets or has been intermingled with or converted into other assets of such failed bank.

EXHIBIT C

Wheat flour mills (by States) reporting losses in 1927, 1928, and 1929 resulting from failure of national banks by reason of treatment as common creditor for amount of drafts placed for collection

GEORGIA	
Mill A[1]	$200.00
ILLINOIS	
Mill A, Planters Bank of Americus, Ga	732.55
Mill B[1]	118.45
Mill C (seven separate items)[1]	6,528.89

[1] Names of banks not given.

INDIANA		
Mill A (two items) [1]		$3,200.00
IOWA		
Mill A [1]		101.63
Mill B (loss sustained in 1926) [1]		482.00
KANSAS		
Mill A (in process of settlement, estimated loss) [1]		150.00
Mill B (two items, prior to 1927) [1]		1,821.36
Mill C, New First National Bank of Springfield, Mo		1,500.00
Mill D, First National Bank of Lewisville, Ohio. (In process of settlement, estimated loss)		300.00
KENTUCKY		
Mill A, Two banks in Georgia, one bank in North Carolina		1,336.89
MINNESOTA		
Mill A [1]		86.50
Mill B (additional losses in State banks, $4,800) [1]		698.75
Mill C, Fayette City National Bank, Fayette City, Pa. (In process of settlement, estimated loss)		1,245.00
Mill D, Four national banks. (Additional losses in State banks) [1]		2,995.53
MISSOURI		
Mill A, Two national banks. (In litigation) [1]		2,920.18
Mill B:		
1. First National Bank, Clarksville, Ark	$1,290.45	
2. First National Bank, Dublin, Ga	1,456.85	
3. First National Bank, Springfield, Mo	912.75	
		3,660.05
(Additional loss of $998.99 in State bank in Iowa.)		
Mill C, National bank, Atoka, Okla		265.00
Mill D, First National Bank, New Bern, N. C		1,293.39
Mill E, (bank failed in 1928, still in process of liquidation) [1]		607.29
Mill F, two items in one national bank. (Additional losses in State banks) [1]		824.73
NEBRASKA		
Mill A:		
National Bank, Crivitz, Wis	$548.21	
Do	304.22	
National Bank, Benton, Ill	1,343.45	
		2,195.88
NEW YORK		
Mill A 1 in 1927, 3 in 1928, 2 in 1929 [1]		721.60
NORTH CAROLINA		
Mill A, National Bank of Fayetteville, N. C. (additional losses in State banks, $317.20)		586.45
NORTH DAKOTA		
Mill A, items in 1924, 1925, 1926, and 1929		3,916.31
MONTANA		
Mill A [1]		250.00
OHIO		
Mill A [1]		143.47
Mill B (2 items) [1]		1,981.53

[1] Names of banks not given.

OKLAHOMA	
Mill A, State National Bank, Ardmore, Okla. (additional losses in State banks)	$600.00
PENNSYLVANIA	
Mill A, Service Trust Co., Passaic, N. J	15.69
VIRGINIA	
Mill A (additional amount of $69 in First National Bank of New Berne, N. C.) [1]	60.00
Mill B, 2 national banks [1]	590.00
Grand total	42,129.12

Mr. STRONG. We will now hear from Mr. [redacted]walt, but before we hear from him I want to place into the record a letter from the Secretary of the Treasury on this bill.

(The letter referred to is as follows:)

TREASURY DEPARTMENT,
Washington, January 29, 1929.

MY DEAR MR. CHAIRMAN: Reference is made to your request for report on H. R. 13849, a bill to provide that transferors for collection of negotiable instruments shall be preferred creditors of national banks in certain cases.

Claims of the class described in this bill when now filed against insolvent national banks under the present law are given a preferred status provided it appears that the proceeds of the collections (1) augmented or increased the assets of the bank, and (2) are traceable into the funds which come to the receiver. (See Ellerbe *v.* Studebaker Corporation, 21 Fed. (2) 993, and cases cited.)

The bill would amend the law by eliminating the necessity for showing augmentation of assets, and the tracing of the collection of proceeds into the hands of the receiver. Such amendment would, in the event no augmentation or tracing of funds is possible, result in penalizing the general creditors by requiring the fund held in trust for them, not shown to have been enriched by the collection, to respond with such payments. This bill would be in conflict with the well-established rule of law governing the administration of insolvent estates in general, applied by all Federal courts and practically all State courts. It should be remembered that Congress was so impressed with nonpreference and ratable distribution of dividends that in passing section 5236 Revised Statutes it repealed a former act giving a preference to the United States and annulled a statute of a State giving a preference to deposits of savings banks.

The courts have said:

"The foundation of the right on part of the owner of a trust fund to a preference over general creditors in payment out of a fund or estate that has passed to the assignee or receiver of an insolvent person or corporation is, that the trust fund has been wrongfully confused or intermingled with the property of the insolvent, or has been used to increase the value of property, thereby increasing the amount or value of the funds or estate passing into possession of the assignee or receiver; that, if this intermingling had not taken place, the fund passing to the receiver would have been so much less; that the creditors have only the right to subject the property of the debtor to the payment of their claims, and therefore the creditors can not complain if the total fund coming into the hands of the receiver is reduced by the amount necessary to make good to the owner of the trust fund the sum which was wrongfully used in augmenting the fund or property passing to the receiver. Unless it appears that the fund or estate coming into possession of the receiver has been augmented or benefited by the wrongful use of the trust fund, nor reason exists for giving the owner of the trust fund a preference over the general creditors, and this we understand to be the doctrine recognized by the Supreme Court of Iowa and the Supreme Court of the United States alike."

Thus the passage of the bill would create a preference from the mere fact of collection of the proceeds regardless of whether or not such proceeds were afterwards traceable to the hands of the receiver. This is clearly unjust to the general

[1] Names of banks not given.

creditors. The assets of the general creditors should not be taken for the purpose of preferring a creditor whose property is not included within said general assets.

It is, of course, natural that a bill of this character should be very popular to some of those who deal with banks since it is the desire of every one to be protected if a bank fails but such protection should not be at the expense of the general creditors. To upset the well-established principles of law governing these matters, both in national cases and in State cases, is unsound.

For the above reasons the Treasury is opposed to the passage of this bill.

Very truly yours,

A. W. MELLON,
Secretary of the Treasury.

Hon. LOUIS T. MCFADDEN,
Chairman House Committee on Banking and Currency,
Washington, D. C.

STATEMENTS OF F. G. AWALT, DEPUTY COMPTROLLER OF THE CURRENCY, AND GEORGE P. BARSE, GENERAL COUNSEL, DIVISION OF INSOLVENT NATIONAL BANKS

Mr. AWALT. Mr. Chairman, before proceeding with any general statement, I want to explain that the letter from the Secretary of the Treasury to the chairman of the committee, dated January 29, 1929, which has been placed in the record by Mr. Strong, was written in answer to a request from the chairman of the committee for a report on a bill introduced at the last session of this Congress which has a different number but which is identical with the Strong bill.

Mr. STRONG. That is true.

Mr. AWALT. And it therefore applies to this bill as well.

If I have your permission, I would like to read several sentences from this letter. [Reading:]

> The assets of the general creditors should not be taken for the purpose of preferring a creditor whose property is not included within said general assets. It is, of course, natural that a bill of this character would be very popular to some of those who deal with banks since it is the desire of everyone to be protected if a bank fails but such protection should not be at the expense of the general creditors. To upset the well-established principles of law governing these matters, both in national cases and in State cases, is unsound.
>
> For the above reasons the Treasury is opposed to the passage of this bill.

That, in general, states the objections of the Treasury to the enactment of this bill into law. We feel that the general creditors' rights are being gradually eaten away by preference, and as Mr. Wingo stated this morning, in 1929 50 per cent of the distribution of dividends to creditors of national banks went to preferred or secured creditors. This bill, if you pass it, will add another preference that will eat into the general creditors' money at their expense, and it may mean that some one will come along a little later and want another bill, and since there is no one appearing for the general creditors we feel that we should.

I might say in that connection that if the general creditors, and I speak generally of depositors in national banks throughout the country, knew what this bill does, and were organized, you would have a great many more letters written to you than have been presented on the other side of the case.

Mr. Barse, who is general counsel for the insolvent national bank division of the comptroller's office, is here and he has prepared a statement, and as it is rather long he is going to ask for permission to file it and just outline what is in it instead of going through this long statement.

Mr. STRONG. Very well.

(The statement referred to is as follows:)

The national banking laws, dealing with the liquidation of insolvent national banks contain no specific provisions for the allowance of preferred claims, but, on the contrary section 5236 U. S. R. S., provides that the Comptroller of the Currency shall make a "ratable dividend * * * on all such claims as may have been proved to his satisfaction or adjudicated in a court of competent jurisdiction." The establishment and allowance of preferred claims, as distinguished from the claims of general creditors, is the result of court decisions, and is based upon the theory that the assets in the hands of the receiver contain property belonging to the particular claimant, title to which had never vested in the bank and which, therefore, the bank had been holding in trust. Hence, under the foregoing theories, the comptroller, in the liquidation of an insolvent national bank, proceeds to make a "ratable" distribution of the proceeds of such of the assets as are avilable for the benefit of the general creditors, but such property as may be identified or allocated as belonging to a particular claimant is delivered to him, such delivery to such claimant consisting of either the specific property so identified, or such funds in lieu thereof as were derived from said specific property, assuming that said funds were added to the general assets of the bank and had not been dissipated, prior to suspension and were consequently, taken over by the receiver.

From the foregoing general statement of the theory as to the allowance or disallowance of preferred claims, it may be noted that three elements must exist as the basis of a preferred claim:

(*a*) A trust relationship between the bank and the claimant;

(*b*) The augmentation of the assets of the bank as a result of the trust relationship whereby the bank acquires additional funds consitituting the property of the claimant.

(*c*) The tracing of said funds to the assets taken over by the receiver at suspension.

The collection of a check may be made in several ways, some of which will result in additional funds being brought into the collecting bank, but in other instances the collection may be made without additional funds being brought into the bank, or, even if additional funds are brought in, the funds may be wrongfully dissipated by the bank so that at the time of its suspension such funds are not on hand to be taken over by the receiver.

It is usually assumed that a failed bank in cases sought to be covered by the Strong bill collect actual funds and that the funds so collected build or augment the assets of the bank and that said assets are taken over by the receiver.

It should be noted that assuming such state of facts to exist in a given case, the court decisions which are given below would allow a preferred claim and the Strong bill adds nothing to the rights of such claimants in that respect. However, the Strong bill goes further than affording such relief and gives a preferred claim to a transferor or forwarder in cases where the collection of the item had not resulted in building up the assets of the bank and where the receiver had not taken over any funds or property representing the proceeds of the collection. Consequently, it would seem to be an injustice to the depositors and general creditors of the failed bank to require them to contribute their property, through the receiver, toward the payment of a preferred claim to a transferor or forwarder of a collection item, where no proceeds from the collection item have been taken over by the receiver. If a transferor sends to the national bank for collection and remittance a draft with bill of lading attached, collection may be made in several ways, with a surrender of the draft and of the attached bill of lading being made to the drawee in each case. In some instances the collection of the item will result in additional funds being brought into the bank, but in other instances the collection may be made without additional funds being brought into the bank, or, even if additional funds are brought in, the funds may be wrongfully dissipated by the bank so that at the time of its suspension such funds are not on hand to be taken over by the receiver. A few specific illustrations will indicate more definitely the distinction between the two classes of cases where, on the one hand, augmentation of the assets with subsequent taking over thereof by the receiver exists, and, on the other hand, where there is no augmentation or no taking over of collection proceeds by the receiver.

Let us assume in one case that the national bank presents the draft to the drawee and collects the same in cash, a surrender of the draft and of the bill of lading thereupon being made by the bank to the drawee. In this case there is